14112

SUPREME COURT OF THE UNITED STATES.

No. ——.

October Term, 1899.

THE BOARD OF LIQUIDATION OF THE CITY DEBT and THE DRAINAGE COMMISSION OF NEW ORLEANS, Plaintiffs in Error,

versus

THE STATE OF LOUISIANA ex rel. MISS L. B. WILDER et als., Defendants in Error.

Writ of Error to the Supreme Court of Louisiana.

Brief for Defendant in Error, the Board of Liquidation of the City Debt, on Motion to Dismiss or Affirm.

Statement of the Case.

The Board of Liquidation of the City Debt, was created by Act No. 133 of the General Assembly of Louisiana of 1880; it was given exclusive control and direction of all matters relating to the bonded debt of the city of New

Orleans; by Section 11 of Act 110 of 1890, to carry into effect a constitutional amendment proposed by the General Assembly contemporaneously with the adoption of the act, which contemplated the retirement of all existing bonds of the city of New Orleans, except premium bonds, and the payment of certain floating indebtedness when reduced to judgments, the board, as established by the act of 1880, and as constituted when the act of 1890 was adopted, was again created a body corporate with the right of existence and succession until January 9, 1943; it was also provided that nothing in the act of 1890 should be construed to affect or change in any manner, the duties, powers, and functions, of the Board of Liquidation under laws then existing, not inconsistent with the act of 1890, but that all such duties, functions, rights, and powers, were maintained in full force.

The powers of the Board of Liquidation are distinct from those of the city of New Orleans; the former has sole and exclusive power over everything that relates to the city's bonded debt, and is charged besides this with the payment of a certain class of the city's floating indebtedess which may be reduced to judgments (see Act No. 67 of 1884, Section 1, Constitutional Amendment of 1892, Section 3 of Act 110 of 1890). The city exercises all ordinary municipal powers.

So separate and apart from each other are the board and the city, in their respective fields of authority, that there has been litigation between the two for the enforcement of the rights of one as against the other.

Board of Liquidation vs. City, 32 La. An. Reports, 915; Same vs. Same, 36 La. An. Reports, 524.

Charged with the custody and administration of funds and assets dedicated to the retirement of the bonded debt, the board is a trustee for all holders of municipal obligations payable out of the funds and property in its hands.

Under the acts of 1880, 1884 and 1890, it is not only its right, but its duty to resist any attempt to divert the same from their lawful destination, this has been recognized by the supreme court of Louisiana.

Rubera vs. Board of Liquidation, 35 La. An. Rep. 753.

State ex rel. Wood vs. Board of Liquidation, 40 La. An. 398.

This suit is for a mandamus to compel the Board of Liquidation to sell a sufficient number of constitutional bonds, to provide funds to pay the claims of defendants in error, which have been approved by the city council, under Article 315 of the state constitution, adopted in 1898. The judgment of the district court in which the suit was instituted was in favor of relators there, defendants in error here, making the mandamus peremptory.

The Board of Liquidation set up in defence that Article 317 of the Constitution of 1898, which directed that it should sell a sufficient number of the Constitutional Bonds issued under Act 110, 1890, to pay and discharge the school claims approved by the City Council, under Article 315 of the same Constitution, was in violation of Section 10 of Article 1, and of the Fourteenth Amendment, of the Constitution of the United States.

That the Constitutional Bonds under the amendment of 1892 and act 110 of 1890 could be issued only for:

First—The retirement of the then existing, valid outstanding bonds, of the city of New Orleans, premium bonds excepted.

Second—Judgments rendered against the city on floating debt claims arising prior to 1879, entitled to be funded under Act 67 of 1884. (See Constitutional Amendment, Section 1: Act 110 of 1890).

That the funds derived from the sale of constitutional bonds, under Sec. 3 of Act 110 of 1890 ~~(see Act of~~

~~1890, section 6),~~ could be used solely and exclusively for:

Retiring by payment all the then outstanding valid bonds of the city of New Orleans, and judgments rendered on floating debt claims created prior to 1879, entitled to be funded under Act 67 of 1884.

That the obligations of the following contracts, and the rights of the following parties, would be impaired if the direction of Article 317 of the Constitution of 1898, were carried into effect:

First—The holders of the Constitutional 4 per cent. bonds, who had the right to exclude from participation in the one per cent. tax, authorized by the constitutional amendment, and act of 1890, any person or obligation not enumerated in the same as entitled to receive any portion thereof.

Second—Contractors, who had made works of permanent public improvement, under section 10 of the act of 1890, by which they were payable out of the surplus described by section 8 of the act; which surplus is that which remained after paying the fixed charges enumerated in section 8; that these could not be increased by any legislation, of whatsoever character, posterior to the act of 1890; to issue the consiitutional bonds required by Article 317 would add to the mass, a burden not enumerated in Section 8, which would create a corresponding diminution of the surplus; that the city contractors had a right to this surplus, undiminished by any burden, beyond the fixed charges set out in section 8.

Third—The drainage contractors, and contracts for drainage work made by the Drainage Commission, payable out of the permanent public improvement fund, spoken of by sections 8 and 10 of the act of 1890, and devoted after January 1, 1898, to the specific permanent public improvement of drainage, and which, by sections 3 and 7,

of act 114 of 1896, was dedicated to the holders of the drainage bonds, and by section 7 of act 63 of 1898 to every person or corporation which had entered into contracts with the Commission.

The opinion of the supreme court of Louisiana, on the appeal of the defendant board, was to the following effect:

First—That the Board had the right to set up the unconstitutionality of Article 317 of the Constitution of 1898, on the authority of the Board of School Directors vs. New Orleans, 32 An. 96. (See Opinion.)

Second—That the operation of Article 317 is restrained by the Constitution of the United States.

Third—That the constitutional convention had the right to determine for itself, free from legislative and constitutional control, the extent to which permanent improvements should be made, within the limits of the city of New Orleans, and the amount to be expended for that purpose.

Fourth—That the surplus referred to in the acts of 1890 and 1896, and the constitutional amendment of 1892, was not, as contended by relators, the surplus which would remain after provision had been made for an issue of ten millions of dollars of constitution bonds, as provided by the amendment, but that it was the residue of any portion of the tax provided for by act 110, 1890, and the amendment, which was not needed for the payment and retirement of the particular bonds actually issued, and the claims therein specially provided for.

That the Board of Liquidation and the Drainage Commission, and those with whom they had contracted, were justified in placing that interpretation upon the legislation, and contract rights based upon the same.

Fifth—That the convention, while ordering the payment of the certificates held by relators, through sales of constitutional bonds, could not confer upon the holders

of those bonds rights which would in any way came in competition with the contract rights of creditors existing against the tax at the time of the adoption of the constitution; that though there was no mention in the constitution as to the rank of the bonds that would be issued to take up relator's obligations, that rank resulted from legal conditions, which could not be constitutionally interfered with; that while there was no constitutional objection to the convention ordering the Board of Liquidation to sell bonds to take up relator's certificates, there would be constitutional objection if the effect of the issuing of such bonds, would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for as to their funding and payment by act 110 of 1890, act 114 of 1896, and the constitutional amendment of 1892.

Sixth—That the constitutional bonds which relators seek to have issued, would really be drawn against any surplus which would remain of the 1 per cent. tax after the payment of all bonds issued, and to be issued by the Board of Liquidation under act 110 of 1890, and the constitutional amendment of 1892, in order to fund, retire and pay the bonds and debts therein specifically enumerated; and also bonds issued and to be issued by the Drainage Commission, under the provisions and authority of act 114 of 1896, to pay contracts existing at the date of the adoption of the Constitution, which were entered into, upon the faith of the surplus directed to be set aside to the credit of the Permanent Public Improvement Fund by act 110 of 1890 and act 114 of 1896, and the constitutional amendment of 1892.

Seventh—That the effect of this would be, to subordinate the rights of holders of bonds issued by the Drainage Commission to pay for contracts entered into after the adoption of the Constitution of 1898, to those of the holders of the Constitutional Bonds issued under Article 317.

It would thus appear from the opinion, that every ground assigned by defendant as a reason for its non-compliance with article 317, has been maintained by the state supreme court, and its refusal to obey the command of article 317, and every defence it raised to the suit of relators; which was not to obtain the relief which is outlined in the opinion, but to enforce the rights which are in terms undertaken to be conferred by Article 317, differing *in toto* from what the state supreme court in its *opinion* intended to award, is affirmed to be correct and well founded in law.

It is rational to assume that court, should have rendered such a decree as would give effect to the principles, by which, the opinion declares, the case was governed; yet a slight examination conclusively shows that the decree actually rendered, is the reverse of this; the judgment of the district court is affirmed without qualification or limitation of any kind whatsoever; its judgment is a hard and fast enforcement of the directions of Article 317 which ordered the sale of a bond differing radically from that which is described in the opinion of the supreme court; to have acquiesced in the judgment of the district court would have been to disregard every consideration which the opinion of the supreme court unequivocably declares should control the defendant; the affirmance of the judgment of the district court directs defendant to do everything which the opinion of the supreme court declares it had no right to do, and which it was its duty to refuse doing.

As has been seen, by article 315 of the constitution of 1898, the city of New Orleans is authorized and required to examine into and assume the payment, of certain obligations of the Board of School Directors of the public schools of the parish of Orleans, for unpaid salaries and other legitimate claims for the years 1882, 1883 and 1884; and for certain unpaid salaries for the years 1885, 1886 and 1887,

in the hands of the original owners, who had in no wise parted with their rights of ownership, or pledged same, as might be found by the city to be equitably due by the Board.

By Article 316 the City Council is directed to issue certificates of indebtedness to the owners of such claims, as were found to be equitably due; such certificates to be paid by the defendant, the Board of Liquidation.

In order to raise funds to pay the claims so certified to be due by the Council, the defendant is directed by Article 317 to issue and sell a sufficient number of constitutional bonds of the city of New Orleans, provided for by Act No. 110 of the General Assembly for the year 1890, and by the amendment to the constitution, submitted to the people by said act, and adopted at the general election of 1892.

Act 110 of 1890 is composed of a joint resolution of the senate and house of representatives, proposing an amendment to the constitution, and an act known on the calendar as Act No. 36, to carry the amendment into effect; the proposed amendment provides for the funding of the bonded debt of the city of New Orleans, other than premium bonds, into four per cent. bonds, and for a special tax to pay the bonded debt of the city, also exempting the four per cent. bonds from taxation; the act is to carry the amendment into effect; its title declares its purpose to authorize and direct the city to issue, through defendant, four per cent. bonds, known as constitutional bonds of the city of New Orleans, payable fifty years from date; to direct the retirement of the then outstanding bonded debt of the city, premium bonds excepted, by the sale of constitutional bonds, the application of the proceeds by defendant to the payment of such outstanding bonds, premium bonds excepted, and to the payment also of certain judgments against the city on floating debt claims created

prior to the year 1879; after other provisions, not important to be mentioned at this time, it directs the levy and collection by the city of a tax of one per cent. to be paid over to the defendant, to be applied to the bonded debt of the city of New Orleans; after declaring that the further purpose of the act is to provide "for the disposition of the surplus of said tax, not required for the aforesaid bonded debt," it is added, "and to recognize said tax as the contract right of the holders of the aforesaid bonds * * * "

The first section of Act 110 (or No. 36) of 1890 declares that, *in order to provide for the retirement of the outstanding bonded indebtedness of the city*, and such other indebtedness, as under laws *then existing*, was, or might become, entitled to be funded into any series of bonds, premium bonds excepted, the city was authorized to issue bonds to the amount of ten millions of dollars; that the bonds, after being signed by the mayor and comptroller of the city, were to be delivered to defendant, to be used for the purposes before mentioned, in accordance with the provisions of the act; a daily report to the mayor by the secretary of defendant was required, of the number of bonds issued and delivered by it, and the purposes for which they were so issued; this report to be laid before the council by the mayor, and the finance committee was required to examine and verify the same at least once a month, and report the result of their examination to the council.

By section 2, defendant was empowered to dispose of such amounts of constitutional bonds, *as might be deemed requisite*, for the purposes thereafter expressed in the act; and by section 3, all funds derived from such sales were to be deposited to the credit of a special fund, called the "Bond Sales Fund," which, it is declared, "*shall be used solely and exclusively for the purpose of retiring by payment all the said now outstanding valid bonds of the city of New Orleans, matured or subject to be called, in-*

cluding certificates or bonds issued under the fourth section of Act No. 58 of 1882, and including judgments now or hereafter rendered on floating debt claims, prior to 1879, entitled to be funded under Act No. 67 of 1884, but excluding premium bonds " * * * * *

By section 7, in order to provide for the payment of the principal and interest of the constitutional bonds authorized by the act, and all other outstanding valid bonds of the city of New Orleans, it was made the duty of the council and of the proper officers of the city, for the year 1892, and annually thereafter, until the principal and interest of the bonds were fully paid, to levy a special *ad valorem* tax of 1 per cent. upon all the taxable property, real, personal and mixed, in the city of New Orleans; the proceeds of the tax to be paid over to the fiscal agent of defendant, each day, as collected.

By the terms of Section 8, out of the proceeds of the said tax, beginning in the year 1892, defendant was directed annually to provide for the carrying of the premium bond plan, and payment of the interest upon the constitutional bonds authorized to be issued by the act, and interest on all other outstanding interest bearing bonds of the city; and, after the year 1925, for an annual sinking fund necessary to call and retire the number of bonds provided for by section 9; by this latter, the Board was directed to take up $500,000 of bonds per annum, beginning in the year 1925, until and including the year 1937, after which it was to take up and retire annually $700,000 of bonds.

After thus prescribing how, and for what purposes the proceeds of the 1 per cent. tax shall be annually disbursed, defendant is then directed by section 8, after deducting its expenses, and paying any deficiency in the interest fund of any previous year, to pass one half of the surplus of said tax to the credit of a special fund, to be known as the "Permanent Public Improvement Fund," to be disposed

of as thereafter provided; the other half of said surplus to be paid over to the School Board of the city of New Orleans, to be used in the maintenance and support of the public schools of the city.

Section 10 ordains, that the "Permanent Public Improvement Fund," shall be used exclusively for the construction of permanent public improvements in the city, such as levees, canals, drainage stations, pavements, public buildings, public parks and bridges; all ordinances passed by the council to be paid out of the fund, to be first approved by defendant; the true intent and meaning of the clause being declared, not to give the Board any authority to say to what improvement the fund shall be applied, but only to see that it was applied exclusively to the construction of improvements that were permanent.

By the terms of section 16, all the substantial provisions of the act are declared to be a contract between the state, the city, the taxpayers thereof, and every holder of constitutional bonds.

By Act 114 of 1896, the General Assembly created a Board of Drainage Commissioners, giving it full power to contfol and execute the drainage of the city, and to carry out substantially the plan for such drainage, adopted by the Council, by ordinance 10,091, C. S., approved July 10th, 1895, so far as it might find said plan desirable and practicable, with the right, however, to modify same, as, in its judgment, circumstances might require.

By the third section of the act, the portion of the fund in the hands of the defendant, under the provisions of sections 8 and 10 of act No. 110, of 1890, accruing to public works (meaning the "Permanent Public Improvement Fund,") was dedicated and applied to the purposes of the act; and by section 7 all the provisions of the law respecting the dedication and application of funds and money, were declared to constitute a contract with the

holder or holders of the bonds issued under section 6 of the act.

In 1898, the General Assembly, by Act No. 63 of its session of that year, amended Act No. 114, of 1896, in certain particulars; the principal one being a reduction to one million five hundred thousand, the five millions dollars of bonds authorized by the act of 1896, and by section 7, expressly extending the dedication and application of funds and money, as to all persons entering into contracts with the Commission, besides the holders of its bonds; declaring that such dedication and application to be a contract, the obligation of which shall not be impaired.

Such are the constitutional and legislative provisions upon the interpretation of which the case of the defendant for the most part depends.

The City Council, in obedience to the mandate of Article 315 of the constitution of 1898, has examined and certified as being equitably due, certain claims of the character described in the said article, held by relators, amounting, in the aggregate, to $115,000; demand having been made upon defendant to comply with the direction of article 317 of the constitution, and sell a sufficient number of the constitutional bonds to pay the claims of relators, and this demand having been refused by defendant, relators brought this suit by mandamus, to compel its compliance with Article 317.

The defence is, that the latter is in contravention of Section 10 of Article 1 and the Fourteenth Amendment, of the federal constitution, in that it impairs the obligation of contracts; deprives persons of their property without due process of law, and denies them the equal protection of the laws; that defendant is vested by law with full capacity to defend the rights of the persons who are thus injuriously affected.

There was judgment in the district court of the state in favor of relators.

The opinion of the district court is unfortunately brief; it simply declares that, after hearing extended argument, the court is in doubt as to the proper judgment to render; that, being a tribunal of inferior jurisdiction, it preferred that the matters at issue be determined by a higher court.

It will be remembered that by section 8 of act 110 of 1890, the fixed annual charges against the 1 per cent. tax are established, and disposition is made of the remaining surplus; the section declares that, after the defendant shall have provided out of the tax, for the carrying of the premium bond plan, the payment of the interest upon the constitutional bonds authorized by the act itself, and the interest upon all other outstanding interest bearing bonds of the city, and after the year 1925, for an annual sinking fund; and, after making such provisions in each year, deducting the expenses incurred by the board and paying any deficiency in the interest fund of any previous year, one-half of the surplus shall be passed to the credit of the "Permanent Public Improvement Fund," to be used exclusively for the construction of permanent works of public improvement in the city; and the other half to the School Board of the city of New Orleans, to be used in the maintenance and support of the public schools; that to supply resources for the improvement of the city, on lines looking to its advancement, and to secure the benefits of public education, were prominent among the purposes of the act, appears not only from the provisions under discussion, but is made conspicuous by the title of the act itself, which, towards its conclusion, states the disposition of the surplus of the tax, not required for the bonded debt, as a substantial object of the statute; this purpose appearing in the title, is second in importance to no other threin set forth, not even to that authorizing the bond issue itself; it is as clear as language can state it, that section 8 intended that the whole of the 1 per cent. tax should be disposed of; that no part of it, however small, should be left without a

purpose, designated by the law under which it was levied and collected; after the defendant had paid the annual charges to carry the outstanding bonded debt, supplied any deficiency in the interest fund of any previous year, had paid its own current expenses, the surplus, whatever it might be, was dedicated to the purposes of permanent improvements and public schools; this dedication applied to the entire surplus; it mattered not whether, in amount, it varied in the several years; great or small, one-half was given to the improvement fund, and the other half to the School Board.

This is not in any degree affected by the number of constitutional bonds actually issued; if of the entire ten millions of dollars authorized, only a small portion thereof were put upon the market, the disposition of the surplus in its entirety, in equal portions, for the purposes named, would be unchanged; the amount required to discharge the burdens which are enumerated, it is quite easy to see, would not be the same each year; for instance, by the statement concerning the premium bond plan, found in the record, it appears that the amount requisite to carry it, increases by ten thousand dollars each year, until all the bonds are retired, when, of course, it will cease to be a charge at all; hence, the amount of the surplus each year in no manner affected its disposition.

As has been seen, the addition against the one per cent. tax, of any fixed charge or burden, which is not set out in section 8, will immediately effect a corresponding diminution of the surplus, and to that extent would be an invasion of any prior contract right to the surplus; the proposition of defendant is, that the surplus can not, by any process whatever, be lessened, without impairing the obligation of contracts, in the sense against that the fund, out of which they are made payable by law, is decreased in amount; no useful purpose can be accomplished, by ascertaining how much the diminution would be, with the view

of showing that it can be suffered without appreciable injury; such rights as the acts of 1890, 1896 and 1898 may give against the surplus, are vested in their entirety, in those in whose favor they are created; if they be rights, they can not be abated in the slightest degree, without the consent of the owners; if rights at all, they are property, and are not held subject to the judgment of other persons as to how far they are necessary to those to whom they belong.

On the Motion to Dismiss.

The motion to dismiss is founded, on the denial by defendants in error, that the supreme court of Louisiana denies to plaintiff in error, any right secured by the Constitution of the United States, which was set up and claimed.

There can be no doubt that wherever rights acknowledged or protected by the Constitution of the United States, are denied and invaded by state legislation, which is sustained by the judgment of the court of last resort of a state, this Court is authorized to interfere; the true jurisdictional test is made, if it appears that such a question is decided adversely to the federal right; it is of no consequence that the latter is recognized by the *opinion* of the state court, if the *decree* deprives the defendant of its benefit; nor is the case different, if the opinion should even make no mention of such a defence, but judgment is rendered which, by necessary intendment nullifies it, or denies its protection to the party claiming it.

The opinion here, extends the fullest recognition to all of the federal rights set up in the answer of defendant; it would seem that this would lead inevitably to a judgment giving the defendant the constitutional protection which it pleads, and to which the opinion declared it is entitled. There is, however, from the opinion, an abrupt

transition to a decree which oversteps and sets at naught every vital principle by which the opinion declared the case to be governed; while the reasoning of the court throws around the defendant all the protection afforded by the Constitution of the United States, it would appear that this was done for no other purpose than its annihilation by the decree; it is difficult to understand why the court should have been at such pains to precisely define the limitations placed by the federal constitution upon Article 317 of the state constitution of 1898, to follow its conclusions by a decree, which ignored and repudiated every one of them; to what purpose is it declared by the opinion, that all contract rights existing on May 12, 1898, when the state constitution went into effect, can not be prejudiced, or their obligations impaired by that instrument, and after this pronounce a decree which gives to the state constitution an effect which the opinion declares it can not have?

The judgment of the state supreme court affirms that of the district court, which was brought up by appeal; the judgment appealed from makes peremptory the mandamus sought by relators; it directs a literal compliance with Article 317, and accordingly the defendant board was directed to sell a sufficient number of constitutional bonds, to pay and satisfy the claims of relators; this without restriction or limitation whatsoever. The judgment of the district court was an order for the enforcement of Article 317 of the constitution, according to its literal terms; this provides for an issue of constitutional bonds which would stand upon an equal footing with all other bonds issued under the constitutional amendment of 1892, and the act of 1890. These authorize a single series of bonds every one of which is supported by all the guarantees contained in the two pieces of legislation. In emphatic terms, the opinion more than once declares, that no enforcement

of article 317 can be had, which will interfere with, or impair the obligations of any contract made prior to the adoption of the constitution of 1898; that the bonds to be issued for the payment of the claims sued upon, should be subordinate to all such rights; that they should be inferior in rank to such prior existing contracts, and shall be paid only after the latter are fully provided for, in the manner pointed out by the constitutional amendment and the act. The judgment of the district court contained no such conditions; its affirmance by the supreme court leaves the defendant in the same position it would have occupied had it acquiesced in, and proceeded to the execution of, and had not appealed from, the judgment of the court of first instance. Had this been defendant's course, the limitations of right, and the inferior character of the bonds ordered to be sold, made so conspicuous in the opinion of the supreme court, which the reasoning of the court so profusely declares, would never have come to light. The opinion of the supreme court prescribes what are defendant's rights, while it formulates a decree by which they are destroyed.

A federal question arises where the allegation is, that by a statute of a state it made a contract, and by another violated it, and the state court holds the latter statute valid.

The Binghampton Bridge, 3 Wal. 51.

Jefferson Bank vs. Skelly, 1 Black, 436.

Bridge Proprietors vs. Hoboken Co., 1 Wal. 116.

Delmas vs. Insurance Co., 14 Wal. 661.

University vs. People, 99 U. S. 309.

In the present case there was raised by special plea the defence, that article 317 was unconstitutional, null and void by reason of its being in contravention of Section 10, Article 1, and the Fourteenth Amendment of the Constitution of the United States, in the respect that it impaired the obligations of certain contracts, which were

specifically set out, and deprived certain parties of their property without due process of law; that defendant was constituted by the law of its creation and the statutes governing its conduct, a trustee, charged with the protection of all such contracts and persons. There could be no judgment against defendant without finding either that there were no such contracts as those set up; or that there was no impairment as was claimed, and that there was no violation of the fourteenth amendment, which conclusions are necessarily involved in a judgment adverse to defendant. These were the defences made, which stood as a bar to any judgment against the defendant, until the court decided that they were untenable. In this view, the judgment in question here, of necessity was adverse to the federal rights claimed. It could not have been rendered without determining that article 317 was not violative of the provisions of the federal constitution set up. A federal question was clearly presented and decided in favor of the state legislation, and against the right defendant claimed under the Constitution of the United States. The constitutionality of article 317 was drawn in question; the court found that it was repugnant to the inhibition upon a state, against making any law impairing the obligations of contracts, but the judgment of the court was in favor of its validity.

Under section 709 of the Revised Statutes, it is *the final judgment or decree*, and *not the opinion or the reasoning*, of the highest court of a state which may be examined, or reversed, or affirmed, in this Court upon a writ of error; therefore it is idle to refer the defendant to the opinion of the state supreme court, which recognizes every right set up by the defence, in the presence of a judgment by which without exception, they are taken away; wherever rights given by the constitution of the United States are denied or invaded by the *final judg-*

ment of the state court, the jurisdiction of this Court is clear.

It has been said, that "Everywhere in our decisions it has been held, that we may review the judgments of a state court, when the determination or *judgment* of that court, could not have been given, without deciding upon a right or authority claimed to exist under the Constitution, laws or treaties of the United States, and deciding against that right." Murray vs. Charleston, 96 U. S. 442.

The Court cited approvingly, the case of Armstrong vs. Treasurer of Athens county, 16 Peters, 281, where it was held sufficient to give this Court jurisdiction, that it appeared from the record of the state court that the federal question was necessarily involved in the decision, and that the court would not have given the judgment or decree which it did, without deciding against the federal right; nor will this court permit its jurisdiction to be defeated by any evasion of the federal question, or where reference to it by the state court is avoided; this is as much against a party's right within the meaning of section 709 of the Revised Statutes, as it it had been specifically referred to and the right directly refused. Chapman vs. Goodnow, 123 U. S., 548.

This case is not one where there are two grounds of decision, one federal and the other non federal, in which the Court may presume that it was decided on the nonfederal ground, or where the latter is sufficient to sustain the decision; there was no defence of any description that was not distinctly federal in its character; the sole ground of nullity urged against article 317, was its violation of the Constitution of the United States; there was no other issue for the court to determine; no decision could have been reached without concluding whether or not article 317 impaired the obligation of any of the contracts named, or deprived the persons described, of their property without due process of law; the judgment here is in favor of rela-

tors, who insisted that the Federal Constitution offered no obstacle to the enforcement of article 317, and against defendant who set up that it was a complete bar against the operation of article 317, or to its having any effect; there was no conceivable process by which relators could obtain a judgment, without deciding that article 317 was not in contravention of the Constitution of the United States; it was expressly drawn in question on the ground that it was so repugnant, and no effect could be given to it by the supreme court of the state, without deciding that there was no such repugnance, and in consequence rendering a decree adverse to the federal right.

An examination of the opinion of the state supreme court only emphasizes the soundness of defendants' complaint, that it has been thereby deprived of federal rights by the judgment of the court below; the opinion considers the federal questions raised, and resolves all in favor of defendant; but the decree gives to article 317 an effect irreconcilably inconsistent with this opinion; it is to no purpose that abundant recognition of the federal rights is extended by the opinion, if it affords no protection to defendant in the rights secured to it by the Constitution of the United States; the opinion gives point and crushing weight to the error of the judgment; if grounds for the reversal were not otherwise obvious and abounding, they would be abundantly furnished by the opinion which precedes it; every proposition concerning the federal rights set up by the defence, which is found in the opinion, is a ground for the reversal of the judgment; while it was said in Chapman vs. Goodnow 123 U. S. 548, that a right or immunity set up or claimed under the constitution or the laws of the United States may be denied, as well by evading a direct decision thereof, as by positive action, this case presents the remarkable trait, of an opinion, which declares that defendant is entitled to

all the federal protection it claims, and a decree which denies any.

The state can no more impair an existing contract by the constitutional provision than by legislative act.

Gunn vs. Barry, 15 Wallace, 610;

Delines vs. Mutual Insurance Company, 14 Wallace, 661;

Williams vs. Louisiana, 103 U. S. 637;

Durkee vs. Board of Liquidation, 101 U. S. 646;

Clay County vs. Society for Savings, 104 U. S. 579;

Moultry County vs. Savings Bank, 92 U. S. 631;

N. O. Gaslight Company vs. Louisiana Light Company, 115 U. S. 650.

As has been said, this is not a case where the judgment of the court below can be sustained upon grounds other than the one involved in the federal questions presented; there is here no non federal ground upon which the judgment under review can be maintained, independent of any federal question.

As a matter of fact, the only questions involved in the controversy are federal; the only grounds upon which the demands of relators were resisted by the defendant, were, that Article 317 of the Constitution of 1898 was in contravention of Section 10, Article 1, and of the Fourteenth Amendment of the Constitution of the United States; there could be no judgment of the lower court, except such as would either affirm or deny these propositions; under the showing made by the record, and even that made by the petition and answer alone, it is impossible to render any judgment in favor of relators, which does not of necessity, declare that Article 317 must have effect, notwithstanding the oft repeated averments of the answer that it is repugnant to the Constitution of the United States.

The federal questions, upon which the rights set up by the defence depend, are stated in the *opinion* of the

court, which goes to the extent of maintaining all that defendants claim in this respect. It may be then asked what is the ground of defendants' claim, that the judgment below can be reviewed here? The answer is plain, that while the *opinion* abundantly recognizes every protection of the Constitution of the United States which defendant claims, the whole are ignored by the court's *judgment*, which orders the defendant to carry into effect the provisions of article 317, without condition or limitation, in the face of the profuse declarations of the opinion, that, in view of the federal defences raised, article 317 is inoperative save under certain conditions and limitations, by which the federal rights set up by the defendant, are saved from impairment or invasion.

This is not a case where the federal question is evaded; it is not a case where the jungment of the lower court can be sustained upon any non federal ground, independent of the defences based upon the Constitution of the United States; it is the marvelous instance of a judgment which denies federal rights, which the opinion declares must be respected; a conclusion which follows reasons, inevitably tending to an opposite result; a demonstration, which proves the reverse of the inference drawn.

Relators suing for the literal enforcement of article 317, are met by pleas setting up its repugnancy to the Constitution of the United States; they are confronted with no other defence; defendant joined issue as to no other part of relator's case. The approval of the claim by the council of New Orleans under Article 315, their ownership by relators, the correctness of the amounts, were not questioned by the defendant. The sole question was, whether article 317 contravened of the Constitution of the United States; there was no room for the determination of the controversy upon any other ground; it is true that an argument was made, that defendant was without authority to raise the issues mentioned; also that if it had such

right the complaint was not well founded unless article 317 required the issue of more bonds than the ten million authorized by the constitutional amendment of 1892; but upon these issues the court decided in favor of the defendant, which necessarily brought it to the only remaining issue, viz.: the constitutionality *vel non* of article 317 questioned by defendant.

There can be no doubt that the constitutionality of article 317 of the constitution was drawn in question; this appeared by the express averments of the answer; it would be impossible for the court to find its way to the conclusion that article 317 was a valid constitutional enactment, without necessarily overriding the defendant's pleas, and deciding adversely to the federal rights set up.

It is sufficient that it appears from the record itself, that the repugnancy of the statute of the state to the constitution of the United States, was drawn into question, or that the question was applicable to the case, and although the record does not in terms state a misconstruction of the constitution of the United States, or that the repugnancy of the state statute to any part of that constitution, was drawn in question; it is sufficient if from the facts stated, such a question must have arisen, and that the judgment of the state court could not have been what it is, if there had not been a misconstruction, misapplication, or evasion, of the federal constitution, or that the same had been entirely ignored. Crowell vs. Randall, 10 Peters, 396.

It has often been decided, that it is sufficient also if it appears by clear and necessary intendment that the federal question must have been raised, or must have been decided, in order to have induced the judgment; or that the judgment could not have been rendered without deciding the federal question: the judgment here in question could not have been rendered without deciding adversely to the federal right set up in the answer.

Brown vs. Atwell, 92 U. S. 329; N. O. Waterworks vs. La. Sugar Co., 125 U. S. 29; De Sausure vs. Gaillard, 127 U. S. 234.

In the instant case, defendant was awarded the fullest satisfaction by the reasoning of the court; all of its defences were maintained by its opinion, only to be taken away by the judgment; while it has no complaint to make against the former, it has serious ground for objection to the judgment, which deprives it of every federal right so fully recognized by the opinion. It is difficult to understand the purpose of the court in reasoning out a perfect demonstration of the well-founded character of the defences set up by the answer, followed by a judgment which is tenable, only on the theory that all the defences were unfounded.

It has been held by this Court, that where it did not appear from the opinion of the court below that it had formally passed upon any question of a federal nature, still if the necessary effect of the decree was to determine adversely to the right or immunity set up under the constitution, there was jurisdiction over the final judgment of the supreme court of the state.

Roby vs. Colehaur, 146 U. S. 159-60.

Chicago, Burlington, etc. vs. Chicago, 166 U. S. 232.

Green Bay, etc., Canal Co. vs. Patten Paper Co., 172 U. S. 68.

Bearing in mind that this suit was defended on the sole ground that Article 317 of the Constitution was repugnant to the contract clause, and fourteenth amendment of the Constitution of the United States, the court, under the pleadings, was called upon to decide no other question after it had concluded that defendant had the right to raise these issues, and that it could do so, although the entire issue of ten million of bonds authorized by the constitutional amendment of 1892 had not been made. In a rational sense, it was impossible to direct defend-

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ant to carry article 317 into literal execution, without concluding that Section 10 of Article 1, and the Fourteenth Amendment to the Constitution of the United States, furnished no impediment in the way of such a course; a more direct decision adverse to the federal rights claimed, it is impossible for the mind to conceive. The claims of defendant went to the very foundation of the proceedings. The effect of the judgment is in startling contrast with the reasons assigned for it. To meet this position by the claim, that the federal rights were all maintained by the opinion, is to elevate fiction above fact.

Keeping in view, that if it is the *final judgment* of the state court, and not its *opinion*, which may be reviewed on writ of error, this Court will award to plaintiff in error the relief from such judgment to which it may be entitled; also that the opinion is not the judgment, but the reasons therefor; it is a case of singular hardship, where the error in the judgment brought up for review, is made conspicuous by the reasons assigned for it; if the federal right is denied by the reasons, but upheld by the judgment, the error of the opinion can not in the slightest degree impeach the judgment; if, on the other hand, as is the case here, the opinion is profuse in its recognition of every right set up under the Constitution of the United States, is followed by a judgment which denies all of them, the soundness of the opinion can not be called in aid of the judgment, full proof of the error in which, is demonstrated by the opinion. It has been held by the supreme court of Louisiana, that the reasons for a judgment, form no part of the judgment itself, although they may, with propriety, be consulted to explain an ambiguity; (Keene vs. Fisher, 10 La. An. Reports, p. 261); here, there is no ambiguity in the judgment to be explained by the reasons; the former is as clear in its denial of federal rights as the opinion is direct and positive in their recognition; the two are irreconcil-

ably inconsistent; they can not be made to harmonize; each is destructive of the other. The judgment of the state supreme court being sent down for execution to the district court, any attempt to distinguish the bonds sold under it, from all other constitutional bonds; any statement in the advertisement of sale that the bonds offered were subordinate and inferior to all other constitutional bonds, would be a clear violation of the judgment of the district court, which the supreme court affirmed. This judgment directs a literal compliance with article 317, which is to sell constitutional bonds, each one of which will be the peer of all other bonds of the same character; it would be in vain for the Board to rely upon the clearly expressed conditions and limitations placed upon the bonds by the supreme court's opinion, which in no respect diminishes the executory force of the judgment.

The rule prevailing in Louisiana upon this subject is well stated in Davidson vs. Carroll, 23 La. Annual Reports, page 108, as follows:

"The reasons given by the Court for judgment, form no part of the judgment itself, and the judge of the lower court, is not bound by any expression used by the supreme court outside of the decree." Again, in Chaffe vs. Morgan, 30 La. An. Rep., 1310, it was declared: "Reasons for judgment may and often do serve to interpret it and to explain any ambiguity, but it has been often and properly held that the thing adjudged will not be found in the opininion, but in the decree rendered." It is true that this is followed by the statement (page 1310) that the court, for fear of misapprehension, qualifies this rule to the extent, that where the opinion contains matter of instruction how to proceed on some point expressly ruled, it must be obeyed as the thing adjudged. The opinion here, however, contains no such instruction, either in express terms or by implication; on the contrary, adhering to the decree, necessarily involves the ignoring of

all the conditions found in the reasoning. The opinion, at most, is academic and entirely in the abstract, when placed alongside of the decree, which is at variance with every limitation announced in the reasons.

So wide is the separation of the judgment from the reasons assigned for it, that in State *ex rel.* Orleans Railroad Company vs. Judge, 35 La. An. Reps. 218-219, it was declared that the reasons do not form part of the judgment, and that the signature of the reasons is not the signature of the judgment.

If the proposition of the plaintiff in error, that there is a variance between the judgment and the reasons advanced in support of it be well founded, this case would come within the rule stated in Cucullu, Administrator, vs. Brackinridge Lumber Co., 48 La. An. Reps. 681, might be aptly applied. In this case, the Chief Justice, who is the author of the opinion in the present case, speaking of the judgment before the court, said: "As the present one (the judgment) is written, it obviously does not in its terms conform to the reasons assigned for judgment, and it leaves the rights of parties not clearly defined or fixed by it, but to be determined by implication and reasoning." On such ground the judgment of the lower court was reversed, and the case remanded to the judge of the district court to render another judgment. See page 681.

No resort, however, can be had to the reasons of a court in order to interpret its judgment, except where the terms of the judgment are of doubtful construction. Avery vs. Police Jury, 15 La. An. Rep. 224.

It would be impossible to conceive a judgment freer from doubt, and clearer or more explicit in terms, than the one in this case; what it means is apparent at a mere glance; its significance is as obvious as anything that can be expressed by language.

The difference between a judgment and the reasons for the same, so clearly pointed out by the jurisprudence of

Louisiana, is found in decisions rendered by courts of last resort in other states, whereby the opinion and the judgment are declared distinct things; thus, the supreme court of California, in Houston vs. Williams, 13 Cal., page 27, has said, touching its own judgments: "The terms 'opinions,' and 'decisions,' are often confounded, yet there is a wide difference between them, and in ignorance of this, or by overlooking it, what has been a mere revision of an opinion, has sometimes been regarded as a mutilation of the record. A decision of a court is its judgment; the opinion is the reasons given for that judgment. The former is entered of record immediately upon its rendition, and can only be changed by a regular application for a rehearing or a modification. The latter is the property of the judges, subject to their revision, correction and modification, in any particular, when deemed advisable. until with the approbation of the writer, it is inscribed in the record."

The point decided, and not the reasons given for it, is what is fixed by the judgment. Burke vs. Cable Co., etc., 12 Cal. 402.

The constitution of South Carolina required that every point made and distinctly stated in a cause, and fairly arising upon the record, should be considered and decided, and that the reasons therefor should be concisely and briefly stated in writing, and preserved among the records of the case. The supreme court of that state having this article before it in *Ex parte Dial*, 14 So. Car. Reps., 586, said: "In pursuance of this provision of the constitution, this court, in pronouncing judgment, either of reversal, affirmance or modification, has uniformly filed an opinion setting forth the reasons for the judgment, to be preserved among the records of the case, as required by this section. It is true that the final determination or judgment has been usually incorporated as a part or conclusion of the opinion, but it has never been

understood that any reason upon which the judgment was founded, constituted any part of the judgment itself. While the practice has been to embrace the two in the same paper, the one as the logical result of the other, yet they might be separate and contained in distinct papers."

Speaking of a case presenting features somewhat similar to the present one, the Court of Civil Appeals of Texas, stating the effect of declarations found in the opinion upon the judgment rendered, has said: "The language of the judge used in reasoning, in the opinion, or in stating the cause, is not any part of the judgment of the court, though it may be looked to in order to determine what had been adjudicated; and without entering into a consideration of the effect of a judgment which would undertake to reverse as to the plaintiff's cause of action and affirm as to the defendant's plea in reconvention, we think it is sufficient to say that, both parties being before the court, and the court without restriction having reversed the judgment of the court below, it stood reversed as to all issues." 4 Texas Civil Appeals Reports, 632.

On the Motion to Affirm.

The motion to dismiss, ~~was~~ accompanied by one to affirm, on the ground that the federal questions contested below were manifestly decided correctly.

It is apprehended that the argument of plaintiff in error on the motion to dismiss, has placed the court in possession of a knowledge of the case, more than sufficient to ensure its denial, of the motion to affirm; a restatement, however, of the points involved so far as applies to this motion, may be useful.

For this purpose, ~~that~~ it is deemed unnecessary to discuss *seriatim*, the numerous assignments of error, but that it is believed sufficient to note and discuss in the large, the errors complained of.

It was argued on behalf of relators in the lower court that the Board of Liquidation had no right to assail the validity of the constitution of Louisiana, and hence had no capacity to set up the federal rights claimed in the answer.

Upon the authority of Board of School Directors vs. City, 32 La. An. Reports 96, the state supreme court held this challenge of the board's authority to raise the issues mentioned, to be wholly unfounded. In rejecting the contention of relators upon this point, the court used the following language:

"A similar claim was advanced in Board of Public School Directors vs. the City of New Orleans (32 An. 96), and held by this court, to be not well founded."

"We adhere to that conclusion and adopt as correct, the reasons assigned by the court for reaching it."

"It by no manner of means follows, that a board which owes its existence to statute authority, and has its powers and duties defined thereby, is necessarily under a continuing liability to have its future conduct and its future duties, controlled by the same authority."

"There are doubtless cases where this power of control continues absolutely, but there are others where, though it may be continued, it is under limitations; and others again when it ceases altogether."

"This question has to be determined in each case by the nature and character of the duties cast upon the board; the rights of third parties which may have resulted from an acceptance of the trust, and the duty and liability of the board itself and its members, as resulting from the same fact."

"In the case just referred to the court said: 'It would be passing strange if after the defendants have been commanded to show cause why the relief sought against them should not be granted, they could be met when they appear in response, that they have no standing in court'

(11 Wal. 267; 17 An. 251; 39 An. 11). The Court did not hold in 41 An. 156 that they did not possess the right of *pleading* its unconstitutionality and that they must *not be heard*."

Another contention made by relators in the lower court was, in effect, that no one entitled to share in the one per cent. tax could lawfully object to any purpose for which constitutional bonds might be employed, so long as their issue was not in excess of the ten millions authorized by the amendment of 1892 and the act of 1890; that they might be interested that the limit of the amount of the bonds should not be passed, but before this, were without interest as to who should be the holders of the bonds sharing in the fund with them, and in support of their position upon this branch of the case relators relied upon Board of Liquidation vs. McComb, 92 U. S. 531; and this argument was addressed more particularly to that part of defendant's complaint which denied the constitutional right to diminish the surplus, set apart for permanent public improvements under sections 8 and 10 of the act of 1890, and for the payment of the bonds issued and contracts made by the Drainage Commission under acts 114 of 1896 and 63 of 1898.

This contention of relators was disposed of by the supreme court of the state, in the following language:

"We do not take the same view that relators do, as to what was meant by and intended to be conveyed, by the 'surplus' referred to by act 110 of 1890, act 114 of 1896, and the constitutional amendment of 1892. We think the lawmakers intended that any portion of the one per cent. tax provided for in act 110, not needed for the payment or retirement of the particular bonds or claims therein specially provided for, as to payment or retirement, should constitute the surplus of the tax, and that it was not contemplated when the tax was passed or the amendment of 1892 adopted, that in order to exhaust

any portion of the ten millions of dollars originally expected to be needed to pay the existing bonds and the existing claims therein specially enumerated, which might not be necessary thereafter, new classes of claims should and would be thrown under the provisions of the funding law."

"We think the 'surplus,' was intended to connect at once, and follow immediately behind, as to its appropriation, the amount beyond that actually needed to carry out the plan, as originally mapped and planned. The surplus was provisionally ascertained each year, in a manner particularly specified, to be readjusted the next, in a manner also particularly specified; all the surroundings and circumstances connected with the legislation negative the idea that the surplus mentioned was to be, only any surplus over $10,000,000, which might be the result from the collection of the 1 per cent. tax.

"We think the Board of Liquidation, the Drainage Commissioners, and those with whom they contracted, were justified in placing that interpretation upon the legislation, and that contract rights based upon the same should be protected from impairment. The convention while ordering the payment of the certificates held by the relators, through sales of consolidated (constitutional) bonds, could not confer upon the holders of such bonds, rights which in any way would come in competition with the contract rights of creditors, existing against the tax at the time of the adoption of the Constitution. Though there was no mention in the Constitution as to the rank of the bonds which would be issued to take up relator's certificates, that rank resulted from legally existing conditions, which could not be constitutionally interfered with. There is no constitutional objection to the convention's ordering the Board of Liquidation to sell bonds to take up the relator's certificates, but there would be constitutional objection to be urged, if the effect of the

issuing of such bonds would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for, as to their funding and payment by Act No. 110 of 1890, Act No. 114 of 1896 and the constitutional amendment of 1892."

It is assumed by plaintiff in error, that the declarations of the supreme court of Louisiana, first, upon the right of the Board of Liquidation to raise the issues presented by the answer; and second, the right to check the use of the constitutional bonds for purposes not authorized by the amendment of 1892 and the acts of 1890, will be accepted as conclusive by this Court, since these are the constructions placed by the highest court of Louisiana upon a statute of that state, and are entirely apart from any federal question involved.

The right *vel non* of the board to raise the defences found in its answer, is to be determined by an interpretation of the acts of the General Assembly of Louisiana, No. 130 of 1880, No. 110 of 1890, and the constitutional amendment of 1892, all local statutes.

What were the rights of the holders of constitutional bonds, contractors of the city for permanent public improvements, contractors for the Drainage Commission and the bonds issued by it, are questions governed by the state statutes upon which they are founded, and the finding of the supreme court of the state upon these issues should be accepted as binding, by this Court.

Rev. Statutes of the U. S., Sec. 721.
Bausermann vs. Blunt, 147 U. S. 652.
Balkin vs. Woodstock Iron Co., 154 U. S. 187.
County of Leavenworth vs. Barnes, 94 U. S. 71.
Stone vs. Wisconsin, 94 U. S. 183.
Lloyd vs. Fulton, 94 U. S. 479.
South Branch Lumber Co. vs. Ott, 142 U. S. 622.

There is no inconsistency in plaintiff in error calling in

aid these findings of the supreme court of the state, to the judgment of which, this writ of error is taken; it is the *decree* or *judgment* of the supreme court of Louisiana, and *not its opinion*, which is brought here for review; to the opinion, or reasons, by which the judgment is reached, plaintiff in error finds no objection, since it recognizes and sustains every ground of defence set up in the answer; the judgment of the court, however, is in painful contrast with the opinion; the former denies all the federal rights relied upon and pleaded by the defendant, while the latter recognizes them; it is remarkable that the reasoning of the court in its opinion, tending irresistibly to a conclusion favorable to the defendant in error, on every branch of this case, is followed by a judgment denying defendant in error all that is awarded to it by the opinion, and the very reverse of what is clearly demonstrated by the court's reasoning.

As a matter of fact, this case presents the odd circumstance of a judgment which denies to the defendant rights founded on the Constitution of the United States, to which the opinion, at great length, declares it is entitled; the well grounded character of plaintiff in error's attack on the judgment of the supreme court of Louisiana is fully sustained by its opinion, which by law must set out the reasons upon which the judgment was founded.

It is insisted by defendants in error, that the case of the Board of Liquidation vs. McComb, 92 U. S. 531, is decisive of the present controversy, and that the application here of the doctrine of that case, is fatal to the defendant.

An examination of the McComb case itself, as well as a comparison of the statute therein discussed, with the one presently involved, will disclose that its asserted potency is entirely lacking.

The act under consideration in the McComb case was No. 3 of 1874, by the first section of which, the state funding board thereby created, was authorized to prepare and

issue bonds to be known as consolidated bonds of the state of Louisiana, to the amount of $15,000,000; by section 3, these were to be exchanged by the board for all valid outstanding bonds of the state, and all valid warrants drawn previous to the passing of the act, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and warrants; by Sec. 5 it was declared that the consolidated bonds should be used for no other purpose than as authorized by the act.

It will be noted that the statute made no dedication of the surplus of the tax, after paying the fixed annual charges, for any purpose, separate and apart from the bonds; any surplus remaining in any year, after the payment of the annual interest, was appropriated for the retirement and purchase of consolidated bonds; it is entirely correct to say that the entire tax, including the surplus, was set apart for the bonds; and hence, the argument that a bondholder could not complain, if the total authorized issue was not exceeded, could be well made; here however, the surplus under the constitutional amendment and the act of 189c, is not devoted to the retirement of constitutional bonds, but is appropriated to purposes entirely different, viz.: for the support of public schools, and the making of public improvements; any person, therefore, entitled to be paid out of the surplus, would have standing to resist any encroachment thereon, and to restrict the fixed annual charges against the tax to those enumerated in the act of 1890, which is his contract; under the act of 1874, the surplus remaining after the payment of the annual interest, like the tax itself, was destined to support the bonds and nothing else; the tax was devoted first to the payment of interest on the bonds, and then the surplus to their retirement.

The appropriation of the surplus of the one per cent. tax levied by the constitutional amendment of 1892, and

the act of 1890, is as completely appropriated and dedicated to specific purposes, as any part of the tax necessary to carry out any other purposes of both; under section 8 of the act, there is no part of the surplus which is at large, or unappropriated, or available for any purpose, beyond those expressly designated; the surplus, whatever it may be, is devoted one half for the support and maintenance of the public schools, and the other one half, to the construction of works of permanent public improvement; the one half of the surplus set apart for public schools, by the concluding clause of article 254 of the constitution of 1898 is removed from any effect of article 317 of that instrument, by the provision, that the "schools shall also continue to receive from the Board of Liquidation of the City Debt, the amounts to which they are now entitled under the constitutional amendment adopted in the year 1892"; construing articles 254 and 317 so as to give effect to both, the preservation by the former of the school half of the surplus from any encroachment, would confine the effect of article 317 to the one half the surplus dedicated to public improvements, so far as concerns any diminution, as a consequence of imposing upon the tax the principal and interest of the bonds to be issued by article 317.

By section 10 of the act of 1890, the permanent public improvement fund, consisting of the one-half of the surplus already spoken of, was specially dedicated and set apart for the construction of permaneut public improvements in the city of New Orleans, such as levees, canals, drainage, stations and other works of that character. It is shown by the record, page ——, that at the time this case was tried in the court of first instance, there were outstanding and unpaid, contracts for works of permanent public improvement amounting to $————; there can be no doubt that the sums thus due, are charges which outrank, and must be paid out of the fund in question, before any

disposition of the same can be made for any other purpose, and to the extent that article 317 would impose a new charge upon the mass of the tax, and thus reduce the surplus, would be to impair the obligations of all contracts made under the authority of section 10.

In 1896, by section 3 of act of the General Assembly No. 114 of that year, the permanent public improvement fund was withdrawn from the general purpose set out in section 10 of the act of 1890, and dedicated to the specific public improvement of the drainage of the city of New Orleans; the act further took the administration and control of the fund away from the Council of the city of New Orleans and the Board of Liquidation of the City Debt, and confided it to the Drainage Commission, which it created to carry out the drainage scheme ordained by the statute; against this fund, along with one other source of revenue, the Drainage Commission was authorized to issue bonds to the extent of $5,000,000; and by section 7, it is declared that all the provisions of the act respecting the dedication and application of funds and money, constituted a contract with the holder or holders of the bonds, the obligation of which contract should not be impaired, and which could be enforced by any holder of the bonds, by proceedings of mandamus and injunction, or by other proper proceedings in court. By section 6 of act No. 63 of 1898, that of 1896 was amended so as to reduce the authorized bond issue from $5,000,000 to $1,500,000, and by section 7 thereof, all the guarantees which by section 7 of the first act surrounded the bonds issued by the Commission, were extended to all contracts which it made.

It will be thus seen that while under the state funding act of 1874, no provision was made for any surplus of the tax thereby authorized, over and above the amount necessary each year to carry the consolidated bonds actually issued, to any purpose extraneous to and inde-

pendent of, the bonds themselves, here, however, the surplus destined to purposes apart from the bonds, commences at once to accumulate after the actual bond issue is provided for, and immediately becomes subject to all contract rights acquired upon it; these are those resulting from contracts for permanent public improvements made under section 10 of the act of 1890, and the bonds issued, and contracts made by the Drainage Commission; under section 8, there is no hiatus between the payment of the fixed annual charges against the tax, and the remaining surplus; this, from the moment it begins to accumulate, belongs to the owners of the contracts or holders of bonds mentioned.

This is not only clear from the text of the act of 1890 itself, but the opinion of the supreme court of Louisiana in this case, has so declared; it was contended by defendants in error in that that court, that undert he statute the accumulating surplus did not arise until after the maximum limit of ten million of constitutional bonds had been reached; and that the surplus intended by the act, was that which would afterwards remain; that is, after provision had been made for this extreme amount; the supreme court of Louisiana disposed of this argument, in the following language:

"We do not take the same view that relators do, as to what was meant by, and intended to be conveyed by the 'surplus,' referred to by Act 110 of 1890, Act No. 114 of 1696, and the Constitutional Amendment of 1892. We think the lawmakers intended that any portion of the 1 per cent. tax provided for in Act 110, not needed for the payment or retiring of the particular bonds or claims therein specially provided for, as to payment or retirement, constituted the surplus of the tax, and that it was not contemplated when the tax was passed or the amendment of 1890 adopted, that in order to exhaust any portion of the ten million of dollars originally expected to be

needed to pay the existing bonds, and the existing claims therein specially enumerated, which might not be necessary thereafter, new class of claims should or could be thrown under the provisions of the funding law.

"We think the surplus was intended to connect at once, and follow immediately behind as to its appropriation, the amount beyond that actually needed to carry out the plan as originally mapped out and planned; the surplus was provisionally ascertained each year, in a manner particularly specified, to be readjusted the next, in a manner also particularly specified; all the surroundings and circumstances connected with the legislation negatived the idea, that the surplus mentioned was to be only, any surplus over ten million dollars, which might be the result from the collection of the one per cent tax.

"We think the Board of Liquidation and Drainage Commission, and those with whom they contracted, were justified in placing that interpretation upon the legislation, and that contract rights based upon the same should be protected from impairment."

Contractors under section 10 of the act of 1890, contractors of the Drainage Commission, and the holders of its bonds, who are given by law the surplus as one source of their payment, could raise valid objection to any proceedings, by which the surplus would be lessened or contracted, as by imposing upon the one per cent. tax, the surplus of which is that in question, the burden of the bonds directed to be issued by article 317 of the Constitution, a charge not included in, but fixed by legislation subsequent to the act of 1890.

The importance of the circumstance, that while the surplus arising under the act of 1874 is not disposed of for any purpose independent of the bonds thereby authorized, while here there is a complete setting apart and dedication of the surplus under act of 1890, for other purposes, destroys the supposed analogy between the two

statutes, claimed to the advantage of defendants in error.

Coming, however, to the McComb case, it may be premised, before its critical examination, that it is authority in support of, and not against plaintiff in error, upon this branch of the case.

McComb, a holder of consolidated bonds, which he had received in exchange for obligations surrendered, under the act of 1874, sought by injunction to prevent the funding board from issuing to the Louisiana Levee Company consolidated bonds for a class of indebtedness which was not enumerated in the act of 1874, among the obligations for which consolidated bonds could be received; this on the ground that his own consolidated bonds would be injured by the issuance of others, to take up an indebtedness which they were not designed to retire. The decree of the Court, 92 U. S. 541, was an affirmance of that of the circuit court in favor of McComb, so far as it prohibited the funding of the debt due the Levee Company into consolidated bonds issued or to be issued, under the funding act of 1874, but reversed as to so much thereof as prohibited the issue of any other bonds to the Levee Company in liquidation of its affairs. This was a clear declaration of the right of McComb to exclude from participation in the scheme, any indebtedness which was not authorized or provided by the funding act itself. It is precisely such relief, differently applied, that is sought here by plaintiff in error; that is, to exclude from the benefits of the act of 1890 an indebtedness not named in that statute, and which came into existence as a debt of the city, by its voluntary assumption, many years afterward.

An examination of the McComb case shows that the decree of the circuit court awarded a perpetual injunction restraining the Board of Liquidation from using consolidated bonds in the retirement of a certain debt claimed to be due the Levee Company, and also from issuing any other state bonds in payment of the asserted debt. The

bill filed by McComb alleged that he was the holder of consolidated bonds, and that the employment of these bonds for the purpose proposed would be a violation of the pledge given by the act creating the bonds, and would greatly depreciate their value. This Court in its opinion set out the provisions of the act of 1874 and explained its purpose. It appears that in the year 1875, the year subsequent to the adoption of the funding act, the legislature authorized the board to issue consolidated bonds provided by the former, to pay the debt due the Louisiana Levee Company; but this debt was not one of the debts for the settlement of which consolidated bonds had been created; it was not represented by outstanding bonds of the state, or by valid warrants of the state auditor; complainant in his bill further contended that it was not a state debt at all, being provided for by the special taxes appropriated for its payment. Another objection was that the act of 1875 proposed to pay the Levee Company's debt in full, while the funding act authorized the payment of only sixty cents on the dollar. It was insisted that the act of 1875, anthorizing the appropriation of consolidated bonds for the payment of the levee debt, disfigured the scheme and impaired the validity of the contract, made with those who accepted the bonds according to the terms of the funding act, and was therefore void. See 92 U. S., pages 534 and 535.

After considering a contention of the appellee, that to pay the levee debt as contemplated, would be to increase the state debt in violation of the act of 1874, and the constitutional amendment in confirmation thereof, the court reached the conclusion that the argument of the appellee on this point was not well founded; the court said; (ditto, page 537);

"The question, however, remains, whether even supposing the levee debt to be a valid one, it can lawfully be funded into consolidated bonds in view of the other stipu-

lations of the funding act"; the principal of which the court states to be the following:

First—That the consolidated bonds should not exceed an amount of fifteen millions, or so much thereof as might be necessary, that is, necessary for the purpose of consolidating the debt of the state at sixty cents on the dollar.

Second—That they could only be used in exchange for the floating and bonded debt designated in the act, which did not embrace the levee debt in question; and that such exchange shall be at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and warrants.

Third—That a tax of five and one-half mills on the dollar of the assessed value of all real and personal property should be annually levied and collected for the purpose of paying the interest on the bonds and should be set apart for that purpose and no other. Any surplus beyond paying interest to be used for the purchase and redemption of the bonds.

Fourth—That the power of the judiciary by means of mandamus, injunction and criminal proceedings, should be exhausted to carry out the provisions of the act.

The violation of these stipulations by the proposed funding of the levee debt, insisted upon by the plaintiff, were three, only two of which are pertinent to the present discussion; they are, the first, that the entire issue of bonds would be increased by the amount of indebtedness, thereby diminishing the relative superiority provided for each bond; and the third, that the benefits of the scheme provided by the funding act would be lost, by the violation described, and all the advantages anticipated by the complainant and others in surrendering their original debts, would fail.

Discussing these points, as to the first, the Court said (f. 538), that there was no pretence that the Funding Board proposed to issue consolidated bonds in excess of the expressed and limited amount of $15,000,000; but

while the payment of the levee debt by consolidated bonds might exclude obligations actually entitled to share in the scheme, it would not increase the total number of consolidated bonds; that complainant could not contend that he had a right to prevent the state from using bonds for funding its other debts, if those for which they were intended should not be surrended; that plaintiff could not obtain any advantage by the failure of some of the designated creditors not coming in; that he could not be injured if the amount of bonds ultimately issued did not exceed $15,000,000; that he consented, when he took his bonds, that there might be $15,000,000 of them issued; that he could not justly complain if that amount was not exceeded, even if the debts funded thereby were not precisely those specified in the act, provided the material terms of the act were complied with. (p. 539).

The court then finds, that the proposed funding of the debt was not in accordance with the act of 1874, which proposed the issue of consolidated bonds to the extent of sixty cents on the dollar, of the obligations to be retired.

While the reasoning of the Court found on pages 538 and 539, which terminates with the conclusion, that the plaintiff would have great difficulty in maintaining a bill in equity, which enjoined the substitution of one debt for another in the participation of the benefits of the funding act, the decree, which is paramount to the reasoning, *excludes the Levee Company from any participation at all in the funding scheme*, and perpetuates the injunction, which prohibited the funding of the levee debt in consolidated bonds, under any conditions whatever.

If, as a matter of fact, the only obstacle which the Court found, to the funding of the levee debt, was the fact that it was to be funded at par, and not at sixty cents on the dollar, the obvious and necessary result would have been, a decree which would have perpetuated the injunc-

tion of the circuit court, so far as it prevented the funding of the levee debt at par, and which would have set it aside, or modified it, so far as to allow the Levee Company to receive consolidated bonds at the rate of sixty cents on the dollar, for each dollar of its debt for which they were to be exchanged.

The authority of the McComb case, like in other cases, is to be found in the adjudication upon the issue between the parties, and not in its reasoning, *arguendo*, upon which its opinion proceeds; if the thought in the Court's mind was, that McComb could make no valid objection to the funding of the levee debt, on the ground that he sustained no injury by the authorized issue of $15,000,000 of consolidated bonds, no matter for what purposes, even in part, for an indebtedness which the act of 1874 did not intend they should retire, the decree of the Court would necessarily have been, not a perpetuation of an injunction which prohibited the Levee Company from receiving any consolidated bonds at all, but one ordering the funding of the levee debt at sixty cents on the dollar.

The doctrine of the McComb case has been stated by this Court in decisions subsequent thereto, and declarations by which high and unquestionable authority furnishes a most reliable guide to what the import of the decision really is, and what the Court intended. For instance, in Louisiana vs. Jumel, 107 U. S. 725, this Court, through Chief Justice Waite, who presided and took part at the hearing of the decision of the McComb case, declares:

"The Board of Liquidation vs. McComb, 92 U. S. 531, arose under the same act of 1874, which we are now considering. The board was there enjoined, at the instance of a bondholder, from admitting to the privileges of the compromise proposed by the state, certain persons other than those originally provided for, and on different terms. And this clearly because the board was, by

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the very terms of the law, charged with the duty of exchanging the bonds specifically set apart by the contract for a particular purpose, and every *bona fide* bondholder, by accepting the compromise offered, became personally interested in securing the due administration of the trust, which had thus been given to the board. In fact the board held the new issue of bonds in trust, and every one who gave up his old obligations and accepted the new became a beneficiary under the trust, and might act accordingly."

Again, in Cunningham vs. Macon & Brunswick R. R. Co., 109 U. S. 454, the organ of the Court being Mr. Justice Miller, who likewise had a part in the decision of the McComb case, declared:

"The case of the Board of Liquidation vs. McComb, 92 U. S. 531, is to the same effect. The Board of Liquidation was charged by the state of Louisiana with certain duties in regard to issuing new bonds of the state in place of old ones which might be surrendered in exchange by the holders of the latter. The amount of new bonds to be issued was limited by constitutional provision. McComb, the owner of some of the new bonds, filed his bill to restrain the board from issuing that class of bond for an indebtedness not included in the purpose of the statute, on the ground that his own bonds would thus be rendered less valuable. The court affirmed the decree of the circuit court enjoining the board from exceeding its power in taking up with a new issue a class of state indebtedness not within the provisions of the law on that subject."

While it is true that this language was used with reference to the question whether or not in the case decided in this suit was against the state, the particularity with which the learned justice states the issues and quotes the decree in the McComb case, is undoubted evidence of his and the court's understanding of the controlling issue and the scope of the decree in the McComb case.

If the execution of article 317 of the State Constitution will in any respect trench upon the rights arising under the legislative contracts created prior thereto, it is stricken with nullity; one of the tests whether or not a contract has been impaired is, that its value has been diminished by legislation; it is not by the constitution to be impaired at all; this is not a question of degree, or manner, or cause, but of encroaching in any respect upon its obligation, or of dispensing of any part of its force.

Planters' Bank vs. Sharp, 6 How. 327.

The obligation of a contract is the law which binds the parties to perform their agreement; the prohibition has no reference to the degree of impairment—the largest and the least are alike forbidden.

Von Hoffman vs. City of Quincy, 4 Wallace, 552.

The objection to a law, on the ground of its impairing the obligation of a contract, can never depend upon the extent of the change which affects it.

Green vs. Biddle, 8 Wheaton, 84.

Section 2 of the constitutional amendment of 1892, which authorized the city to examine into and assume the payment of claims and obligations of the School Board for the years 1880 to 1894, inclusive, plays no part in the determination of this case. Relators' suit is not founded upon any assumption that the city made under Section 2, but solely upon Article 315 of the Constitution of 1898. It appears from the record that the city had, prior to the adoption of the Constitution of 1898, under the authority granted by Section 2, assumed the payment of the school debts of certain years therein named, and that these were being provided for by appropriations made by the city of New Orleans, not out of the 1 per cent. bond tax, but out of that levied for general municipal purposes. It was not intended that any assumption made by the city under Section 2 of the constitutional amendment should be discharged out of the one per cent. tax thereby authorized.

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If there were any doubt of this it would be solved by the construction that the city and the owners of the claims assumed have placed upon Sec. 2. This was the provision by the city for the payment of the assumed school debts, out of its general revenue, and not out of the one per cent. tax.

This fact was known and recognized by article 313 of the constitution of 1898, which in propounding a scheme for the funding and retirement of the city's floating debt incurred between 1879 and 1885, inclusive, especially excepted therefrom the school claims which had been assumed by the city under section 2 of the constitutional amendment of 1892.

It is hardly necessary to say that relators' claims are not in any event payable out of the one half of the surplus, which by section 10 of the act of 1890, is received by the School Board for the support and maintenance of public schools. There is, in fact, no claim here that it is so payable. The surplus was intended for the future support and maintenance of the schools, from the time that the amendment of 1892 went into effect. Relators' claims against the School Board, which have been assumed by the city under Article 315 of the Constitution of 1898, were incurred at the latest in 1887, five years prior to the time the amendment went into effect.

In Fisher vs. Board, 49 La. An. Rep. 1077, there was under consideration Act No. 136 of 1894, by which it was attempted to use the school surplus for the payment of school debts contracted many years prior to the date of the amendment. On the theory that the surplus which, under paragraph 2 of the amendment, was at the disposition of the Legislature, could by the latter be disposed of for a subsequent and different purpose from that prescribed by section 8 of act 110 of 1890. It was held, however, that the power of disposition given by the amendment was exhausted when once exercised, after

which it became a vested right of the School Board which could not be disturbed by subsequent legislation.

See also U. S. vs. Board of Liquidation, 75 Fed. Rep. 543.

It will be borne in mind that the School Board is a political body separate and independent from the city of New Orleans, and also from the Board of Liquidation; and the city could not become the debtor of its obligations save by assumption legally and constitutionally authorized.

See acts 36 of 1873 and 123 of 1874; Tisher vs. School Board, 44 La. An. Rep. 186.

The court will note that throughout the opinion of the state supreme court there is repeated mention of "consolidated" bonds; where the items "constitutional" was the one intended. This is either a clerical error, or an inadvertence of the Honorable Chief Justice; the term intended to be used was evidently constitutional bonds.

Respectfully submitted,

BRANCH K. MILLER,

Attorney Board of Liquidation of the City Debt, Plaintiff in Error.

August, 1899.

ASSIGNMENT OF ERRORS.

First—That by Sec. 1, of the amendment to the Constitution of the State of Louisiana proposed by Act 110, of the General Assembly of said State, which proposal was approved July 6, 1890, and which said amendment was adopted by a majority vote of the qualified electors of said State at the general election held therein April, 1892, it is provided that the 4 per cent. constitutional bonds of the city of New Orleans thereby authorized, shall be for the purpose of retiring the then valid outstanding bonds of the City of New Orleans, and to retire judgments then, or thereafter, rendered against the said city, on floating debt claims prior to 1879, entitled to be funded under Act No. 67 of the General Assembly of the State of Louisiana of 1884; that by Sec. 3, of Act No. 36 of the General Assembly of 1890, otherwise known as Act No. 110 of that year, it is provided that all funds received by the Board of Liquidation of the City Debt, defendant herein, shall be deposited with the fiscal agent of the City of New Orleans, or if the same be deemed not satisfactory by the said Board, with a chartered depositary selected by the same to the credit of a special fund, called the "Bond Sales Fund," which fund, by said section, it is declared, shall be used solely and exclusively for the purpose of retiring, by payment, all of the then outstanding valid bonds of the City of New Orleans, matured or subject to call; and the payment of judgments then, or thereafter, rendered on floating debt claims, prior to 1879, entitled to be funded under Act No. 67 of 1884.

That the purposes for which said bonds were authorized by said amendment, are exclusive of all others; and there is no authority in law for their issuance for any other purpose, or purposes, than those named in the said

amendment; that by the terms of Section 3, of said act 36, (or 110), of 1890, the proceeds of the sale of said four per cent. constitutional bonds, are set apart and dedicated solely and exclusively to the purposes therein named.

That Article 317, of the Constitution of the state of Louisiana, adopted in 1898, which directs the Board of Liquidation to sell a sufficient number of said constitutional bonds to pay certain obligations of the Board of School Directors of the public schools of the Parish of Orleans, for unpaid salaries of school teachers, portresses, and all other legitimate claims against said School Board, for the years 1882, 1883, 1884, 1885, 1886 and 1887, under the conditions named in article 315 of the said Constitution of the state of Louisiana, so far as the same might be assumed by the city of New Orleans, after its examination of said claims, as directed by said article, directs the issuance and sale of said constitutional bonds for purposes not designated by said constitutional amendment, and by said act No. 36, (or 110) of 1890, by reason of which it is an impairment of the contracts, and the rights therefrom arising, created by said constitutional amendment, and the said act.

That the contracts so violated are those in favor of the holders of all outstanding premium bonds issued by the City of New Orleans; all constitutional bonds issued, or to be lawfully issued, under the authority of said amendment and the said act; those of all contractors, who, up to the time the said Constitution of 1898 went into effect, to-wit: May 1st, 1898, had constructed works of permanent public improvement under contracts with the City of New Orleans, payable out of the surplus of the one per cent. tax authorized by the said amendment and the said act, which said surplus was established and is fully described in sections 8 and 10, of said act; all contracts made by the Drainage Commission, for drainage works,

and all bonds issued by it, under the acts of the General Assembly of the State of Louisiana, No. 114 of 1896, and No. 63 of 1898, which by the last mentioned acts, are payable out of the "Permanent Public Improvement Fund," composed of one half of the said surplus of the said one per cent. tax, established and described by sections 8 and 10 of the said act No. 36, (or 110) of 1890; which said fund by said acts No. 114 of 1896, and No. 63 of 1898, is specially set apart and dedicated to the payment and discharge of all said contracts made, and of all said bonds issued by the said Drainage Commission.

That said acts further provide that all their provisions respecting the dedication and application of funds or moneys, shall constitute a contract with the holder or holders of said bonds, and with each and every person or corporation which may have entered into contracts with the said Drainage Commission, and expressly forbid any impairment of the same.

That the judgment, or decree of the Supreme Court of the State of Louisiana, which directs the execution by this defendant, of said Article 317 of the Constitution of the State of Louisiana, of 1898, by the sale of a sufficient number of said four per cent. constitutional bonds, to pay and retire the obligations of the Board of School Directors for the Parish of Orleans, which have been approved and assumed by the City of New Orleans under Article 315 of said constitution, impairs the obligations of the contracts created by said acts No. 36, (or 110) of 1890, No. 114 of 1806, and No. 63 of 1898; and that the said article No. 317 of the said Constitution, of itself, and as interpreted by the Supreme Court of the State of Louisiana in this cause, and as the said court, by its final judgment or decree herein has directed its execution and enforcement, is an impairment of the obligations of said contracts, and deprives all persons holding rights under the same, of their property without due process of law, all in

violation of Section 10 of Article 1, and the fourteenth amendment of the constitution of the United States.

Second—That by the terms of the said constitutional amendment, and the said act No. 36 (or 110) of 1890, the payment of the yearly allotments and premiums of the premium bonds of the City of New Orleans, and all charges and expenses for the carrying of the premium bond plan of the City of New Orleans, are to be paid out of the 1 per cent. tax, authorized by the said constitutional amendment and levied by the said act; that no person has any right to participate in, nor can any bond or contract be made payable out of the said 1 per cent. tax, or any part thereof, save those expressly mentioned and so permitted by the said constitutional amendment, and the said act; and it is the contract right of any person so entitled to receive any portion of said 1 per cent. tax, to exclude from participation therein any person or contract not so permitted or entitled, under the terms of said constiutional amendment and said act; that Article 317 of the constitution of the state of Louisiana, adopted in 1898, and the effect given same by the final judgment and decree of the Supreme Court of the state of Louisiana, in this case, necessarily impairs the obligation of the contract with all holders of premium bonds created and evidenced by said constitutional amendment and said act, by fixing as a charge upon the said 1 per cent. tax, the principal of and interest upon, the 4 per cent. constitutional bonds which this defendant is directed to issue and sell by said Article 317; and also necessarily deprives all holders of said premium bonds of their property without due process of law; all in violation of section 10, article 1, and the fourteenth amendment to the Constitution of the United States.

Third—That by the terms of the said constitutional amendment and the said act No. 36 (or 110) of the General Assembly of the State of Louisiana of 1890, there is

no warrant or authority of law to issue and sell four per cent. constitutional bonds of the City of New Orleans, for any purposes other than those set out and enumerated in the same, to-wit: to pay and retire all the then outstanding valid bonds, premium bonds excepted, of the City of New Orleans, matured, maturing, or subject to call, to pay judgments rendered against the City of New Orleans for floating debt claims arising prior to 1879, entitled to be funded under Act No. 67 of 1884; that it is a contract right of all holders of said constitutional bonds under said constitutional amendment and said act No. 36 (or 110) of 1890, to prevent the issuance and sale of said constitutional bonds for any purposes not mentioned in said constitutional amendment, and likewise to prevent any act or proceeding by which the burdens on said 1 per cent. tax are to be increased, or charges created against the same, not mentioned or authorized by said constitutional amendment and said act.

That said article 317, of the constitution of the State of Louisiana of 1898, and effect given by the final judgment or decree of the Supreme Court of the State of Louisiana in this case, is to impair the contracts in favor of all holders of said constitutional bonds, created and evidenced by the said constitutional amendment and the said act.

Fourth—That all persons who made contracts with the City of New Orleans and executed the same for the construction of works of permanent public improvement, the prices of which are payable out of the surplus of the one per cent tax authorized by the said constitutional amendment and levied by said act No. 36 (or 110) of 1890, one-half of which surplus, by sections 8 and 10 of said act, being specially dedicated to the payment and discharge of said contracts are entitled to exclude from participation in any portion of said one per cent. tax, any and all persons not entitled to participate therein by the said constitutional amendment and the said act; since any addition to the

burden of said tax imposed by said amendment and said act, will correspondingly diminish the surplus remaining after payment of the annual charges fixed thereon by said amendment and the said act, and thus impair the obligations of the said contracts; that said article 317 of the constitution of the State of Louisiana of 1898, and the effect given to it by the final judgment or decree of the Supreme Court of the State of Louisiana in this case, is to impair the contracts in favor of all holders and owners of said contracts.

Fifth—That the obligations of all contracts made by the Drainage Commission, and all bonds issued by it and sold under the aforesaid acts of 1896 and 1898 which are payable out of the Permanent Public Improvement Fund, composed of one-half of the surplus described in paragraph 4 in this assignment, are in like manner impaired by said article 317 of the state constitution of 1898, and the effect given to it by the final judgment or decree in this case; the impairment of such obligations being the same in all particulars, as that set up in paragraph 4, of this assignment, as concern all contracts for permanent public improvements made with the City of New Orleans, and payable out of the surplus of the said one per cent. tax, established and described in sections 8 and 10 of said act No. 36 (or 110), of 1890; the addition of the charge for principal and interest on the constitutional bonds which are directed to be sold by said article 317 of the Constitution of the State of Louisiana of 1898, effecting a diminution of the said surplus out of which it is the sole and exclusive right of contractors with the said Drainage Commission and the holders of its bonds, to be paid.

That said Art. 317, of said constitution, and the effect given to it by the final judgment or decree of the Supreme Court of the State of Louisiana, in this case is an impairment of the obligations of the contract of said contractors

and the holders of said bonds of the said Drainage Commission.

That said Art. 317 of the constitution of the State of Louisiana, of 1898 and the effect given to it by the final judgment or decree of the Supreme Court of the State of Louisiana, in this cause, impairs the obligation of all the bonds and contracts heretofore set out, mentioned and described and deprives the holders and owners thereof, of their property without due process of law; in violation of Sec. 10, Art. 1, and the fourteenth amendment of the United States.

The Supreme Court of the State of Louisiana erred in giving such effect, or any effect at all, to said Art. 317; and it further erred in not rejecting the demands of the relators, and dismissing their suit on these grounds; that the errors in this said final judgment and decree, and the proceedings anterior thereto, are those specially set out and enumerated above, and they entitle defendant to a reversal of said final judgment or decree of the Supreme Court of the State of Louisiana, and the rejection by this court of relators' demands.

No. 369, 114.

Opp. to Brf. of Miller & Lee & P. C. (mo

Supreme Court U. S.
OCT 30 1899
JAMES H. McKENNEY,
Clerk

Filed Oct. 30, 1899.

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COPIES ARTICLES OF THE CONSTITUTION

AND

ACTS OF THE LEGISLATURE OF LOUISIANA,

REFERRED TO IN BRIEF OF THE BOARD OF LIQUIDATION OF THE CITY DEBT.

PLAINTIFF IN ERROR.

COPIES ARTICLES OF THE CONSTITUTION

AND

ACTS OF THE LEGISLATURE OF LOUISIANA,

REFERRED TO IN BRIEF OF THE BOARD OF LIQUIDATION OF THE CITY DEBT.

PLAINTIFF IN ERROR.

ACT 36 OF 1873.

No. 36.] AN ACT

To provide Additional Regulations for the Board of School Directors of the city of New Orleans; to provide a Permanent Revenue for said Schools; to prevent Litigation against the School Fund; to Fund the School Debt; to Regulate the Employment of Teachers, and to direct the Council of the city of New Orleans to levy a School Tax, and perform other duties in connection with the Public Schools.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That the Board of School Directors for the city of New Orleans shall be in future composed of twenty directors, to-wit: one from each representative district, as at present constituted, and one additional director for each municipal district, the Administrator of Finance of the city of New Orleans, who shall be *ex officio* a member, and the superintendent of the sixth division, who shall be *ex officio* a member, with the right to speak but not vote in the board. The State Board of Education shall appoint the directors from the municipal districts as soon as practicable after the passage of this act, so that two shall retire annually, the said State board to determine by lot the succession of their retirement. They

shall require the said director to possess the qualification of an elector in the city of New Orleans and the necessary fitness and capacity for the office, and each new director, before taking his seat, shall take the oath of office prescribed for State officers.

SEC. 2. *Be it further enacted, etc.*, That as soon as practicable after the passage of this act the Board of Directors for the city of New Orleans shall adopt an estimate of debt and expenditures for the year 1873, and thereafter, during the month [of] October in each year the board shall in like manner adopt and communicate to the Council of the city of New Orleans an estimate for the year commencing on the first of January next ensuing.

SEC. 3. *Be it further enacted, etc.*, That it shall be the duty of the city of New Orleans to keep in good repair, through the proper department, all school houses, fences, grounds and apartment buildings belonging to the city, and the Council shall see the proper carrying out of this requirement, and make due provision therefor in the budget of current city expenses as a part thereof.

SEC. 4. *Be it further enacted, etc.*, That the Council, after receiving the estimate required in this act for the year 1873, or subsequent years, shall proceed to make provision for the support of public schools in addition to those required in section three of this act, to be made for the preservation of city property. For the purpose of such support it shall levy a tax of not less than one-fourth of one per cent. on the taxable valuation of all property in the city of New Orleans, and no provision in any general or special law limiting the aggregate power of taxation of the city of New Orleans, or of the Council, shall prevent the levying of at least one-quarter of one per cent. per annum for school purposes. The tax herein required to be levied for the year 1873 shall be in addition to the taxes levied by the Council in the month of December, 1872, and collectable therewith.

SEC. 5. *Be it further enacted, etc.*, That the revenues of the School Board for its necessary expenses, and the uses and purposes of the public schools, shall be as follows: The proceeds of the tax of twenty-eight cents on the one hundred dollars levied by the Council of the city New Orleans for 1872, the annual taxes levied in accordance with this act, the pro rata of State school tax distributed according to sections thirty-four and thirty-five of act No. 6 of extra session of 1870, any donations, bequests, fines or poll tax received for or accruing to the school fund, and such sum or amount as the City Council may appropriate out of the general funds upon the annual budget, which is hereby authorized, although the same may be raised as a part of the tax for current city expenses; and such sums, if any, as may be raised upon a vote of the qualified electors authorizing taxation beyond or exceeding the limits laid down by law for taxation not authorized by such election; *provided*, that appropriations for purchasing landed property or erecting buildings may, at the option of the Council making the same, be expended under its control; and *provided further*, that property and buildings purchased or erected by the School Board shall be the property of the city of New Orleans, and only alienable by the consent of the Council, and shall not be subject to seizure for any debt.

SEC. 6. *Be it further enacted, etc.*, That for the purpose of relieving the public schools of the city of New Orleans from the pressure of debt, the Council of the city of New Orleans is hereby directed to issue new consolidated bonds, general series, at the rate for said bonds of ninety cents on the dollar in favor of all holders of warrants of the School Board for the debts for the years 1871 and 1872, who may desire and demand the same. On the delivery of such warrants to the Administrator of Public Accounts of the city of New Orleans, he shall issue his

warrant on the Administrator of Finance for the delivery of bonds accordingly.

SEC. 7. *Be it further enacted, etc.*, That no warrant or certificate of any kind shall be hereafter receivable for any school tax, but the school taxes shall be payable in cash only; and the Administrator of Finance shall pay out the cash received for the tax of 1872 for the oldest warrants outstanding of 1871 or 1872, so that no warrants of any month shall he paid until those outstanding of previous months are paid or fully provided for, and the cash hereafter received from the State and from other sources, including the school tax of 1873, shall be appropriated for the expenses of each month in turn, beginning January 1, 1873; and no writ of *fieri facias* or of mandamus shall lie for the seizure of any school moneys in the fiscal agency or treasuary of the city of New Orleans or of the School Board, or to direct or enforce its paying out otherwise than in the manner and sequence required in this act.

SEC. 8. *Be it further enacted, etc.*, That the teachers and employees of the Board of Directors of the public schools of the city of New Orleans shall be appointed by said board at such rate of annual salary as may be fixed, and to continue until until otherwise ordered by the board; but no annual salary shall be construed as giving a fixed time of employment; and the board may at any time vacate any position by notifying the incumbent thereof. But no school officer, director or committee shall be empowered to remove any teacher, and no position or appointment shall be vacated except by the board at any meeting of the same. And no suit or action shall lie against the Board of School Directors, or against the school moneys or revenues for the payment of any discharged officer or teacher, the school fund being held sacred for the actual current expenses of the schools. The pay of the regular incumbent, in case of absence from any cause shall be allowed *pro rata* for actual days employed

to the supernumerary or other person temporarily acting. In all suits by or against the Board of Directors of the public schools of the city of New Orleans, or by or against the president of the board, or the Administrator of Finance of the city, involving the disposition of moneys raised or to be raised for school purposes, in case the said board, president or Administrator of Finance shall have occasion to appeal, sue out injunction, or take other proceedings in which ordinary parties would be required to give bond and security, such bond and security shall be dispensed with.

SEC. 9. *Be it further enacted, etc.*, That there shall be appointed by the Board of School Directors a committee on teachers, who shall examine applicants for employment as teachers. The superintendent of the sixth division shall be required to attend and assist at all the examinations of said committee. They shall keep a record of the examination of candidates for teachers of all district (intermediate or primary) schools, and such examination in branches of teaching in which the same may be practicable, shall be in writing. The original papers shall be preserved, and a figure or estimate affixed to each study, whether the examination therein be written or oral. The aggregate per centage or estimate for each candidate shall be test of proficiency, and the list of candidates shall be preserved for the selection of teachers by the board, which shall be bound to select for each and any future vacancy from the twenty names standing highest on the list; *provided*, the committee on teachers shall strike from the list all persons removing from the city, or resigning or declining to be further considered as candidates, and may for cause or reason rendering unfit the employment of the candidate, notwithstanding proficiency, remove his or her name therefrom, and no name shall be stricken from the list by the committee on teachers only as provided for in this act, in case of dismissal of teachers. Teachers in

the schools who shall have been examined by the committee or the State Superintendent, and whose per centage or estimate shall place them in the list of candidates to be selected from, shall be duly considered for promotion in all cases of vacancy; and *further provided*, that nothing in this section shall be construed to prohibit the State Superintendent of Education from issuing to teachers State certificates of qualification.

SEC. 10. *Be it further enacted, etc.*, That the Board of Directors of the public schools shall not be empowered to make contracts or debts for the year 1873, or any subsequent year, greater than the amount of the revenue provided for according to this act, or other school laws existing, it being the intent hereof that parties contracting with said board shall take heed that due revenue shall have been provided to satisfy the claims, otherwise they shall lose and forfeit the same, and no action or execution shall be allowed in aid thereof, and that the board shall not exceed its powers in the incurring of debt.

SEC. 11. *Be it further enacted, etc.*, That this act shall take effect from and after its passage, and all laws or parts of laws conflicting therewith be repealed as far as they so conflict.

ACT 123 OF 1874.

No. 123]. AN ACT

For the better organization and government of the public schools of the city of New Orleans; to set apart the school funds for each year; to provide that the directors shall be directors from the city at large; to increase and secure the standard of qualification for teachers, and regulate their appointment; to enforce the local school tax and the duties of the City Council in reference thereto; to provide for an assistant division superintendent; to require the directors to visit the schools, and to establish a normal school.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That as soon as practicable after the passage of this act, the Auditor of Public Accounts shall report to the Superintendent of Education how much of the two mills tax for the support of public schools has been collected upon each separate annual assessment since the institution of said tax, and how much remains delinquent or uncollected, also, how much of the same has been apportioned according to law, how much, if any, remains in the treasury, and thereafter, with every apportionment of school moneys among the parishes, the Auditor of Public Accounts shall report in like manner to the Superintendent of Public Education what proportion or part of the sum distributed has been collected for each respective year, and the Superintendent of Public Education shall make communication thereof to the board of school directors for the city of New Orleans and the Administrator of Finance of said city, which latter officer shall keep separately for each year the city tax for public schools, together with the State school tax apportioned for and raised upon the State tax made first due and collectible the said year.

SEC. 2. *Be it further enacted, etc.*, That the revenues thus received and set apart for each year shall be devoted

exclusively to the debts of said year, excepting any surplus remaining, which shall be covered into the treasury for the expenses of the succeeding year, and so on.

SEC. 3. *Be it further enacted, etc.*, That in all future appointments to fill vacancies upon the board of school directors for the city of New Orleans as now constituted, the State Board of Education shall appoint from the city at large, and from and after the passage of this act, the members of the board of school directors for the city shall be deemed directors from the city at large, it being the intent and object of this act to repeal the present district and ward system. The board shall not be required to give security on appeal or other bonds, and shall not be executed against for the payment of money by mandamus, except in cases as at present permitted by law.

SEC. 4. *Be it further enacted, etc.*, That the competitive system established by section nine of act No. 36 of 1873 is hereby continued in force, except so far as modified herein. Special examinations shall be held for professors or teachers of the high and normal schools. Teachers of district schools shall be of three grades, and shall be so classified in fixing the results of their examination. Those of the first grade shall be entitled to election to any position up to and including that of principal, those of the second grade to any position up to and including that of first assistant, and those of the third grade can only be appointed to positions inferior to that of a first assistant. Teachers at present in the schools, or who have taught three years previously in any grade, shall not be required to pass examination for such grade, except to obtain certificates from the State or division superintendent. But none shall be newly elected or promoted to be principals or first assistants unless they have passed a competitive examination and shall have received a certificate of qualification from the committee on teachers or the State Superintendent, as providedby section nine of act No. 36 of

1873, of the twenty highest on the record of the committee on teachers, and the Administrator of Finance shall not pay, or, if he does, shall be liable in solido with the directors appointing any teacher in violation of this section, for the full amount of the salary paid, and the directors making or participating in such appointments shall be liable to the teacher for salary and not the school fund or board in its corporate capacity. For teachers of third grade the application of the competitive system shall be optional with the school board, provided the candidates be fully qualified, and have the certificates by law from State or division superintendent, or the committee on teachers, or have served three years as aforesaid.

SEC. 5. *Be it further enacted, etc.*, That teachers shall only be elected or appointed by the board at a stated or regular meeting, excepting temporary appointments, the right to make which may be delegated to the committee on teachers. The appointees to serve only till next regular meeting, and the board shall not otherwise delegate or subdivide its power of appointment; *provided*, the committee on teachers may suspend for gross cause till such regular meeting only, when the board may further suspend or remove, otherwise the teachers shall be reinstated. No teacher shall be removed except by the board in regular meeting after such gross charges shall have been proved. Payment during suspension shall be optional with the board, whether by vacating and dispensing with the position, or supersedure or removal. It shall be sufficient that the board, upon action in regular meeting, notify the former incumbent that his or her services are no longer required, to discontinue the salary.

SEC. 6. *Be it further enacted, etc.*, That there shall be appointed by the State Superintendent of Education an assistant division snperintendent at a salary of two thousand five hundred dollars per annum, payable in monthly parts out of the current school fund. He shall assist the

division superintendent in the general discharge of his duties, and under his directions visit the various schools and aid in the public examinations; and that the office of secretary of the division superintendent of the sixth division, is hereby abolished.

SEC. 7. *Be it further enacted, etc.*, That the division superintendent shall be ex officio a member of all the committees for the purpose of consultation and information; he shall call them together and shall join in their proceedings, reports or otherwise at his option.

SEC. 8. *Be it further enacted, etc.*, That the board shall appoint permanent or annual high school committees, and monthly visiting committees for the district schools, to be rotated in such manner that each school district shall be visited at least once a month; and any director neglecting his assigned duty of visiting, or absenting himself from the board for two months in succession without leave of absence, shall forfeit his place in the board, and the State board shall fill the same for the unexpired term. No assignment as visiting director or committee to any district shall constitute him or them as directors of such district, except for the purpose of visiting and reporting upon the same, it being the intention of this act that each member of the board shall be a director of the public schools of the city of New Orleans at large, and alternated upon visiting committees in such manner as to visit the schools in all parts of the city during his term of office.

SEC. 9. *Be it further enacted, etc.*, That the tax required to be levied by section four of act No. 36 of 1873 shall be levied as soon as practicable after the expiration of the month of October, or the making of the estimate of the board of directors, but shall not be invalidated if delayed by any cause. The levy up to one-fourth of one per cent. shall in no case require an election or approval by the qualified electors, nor shall an increased levy require such election or approval unless thereby the aggregate or limit

of city taxation be exceeded. Failure of the Mayor or any Administrator to comply with said section four of act No. 36 of 1873 before the close of the year in which the estimate is made, shall render his office *ipso facto* vacant, and the Governor shall fill the same by appointment, and the Council shall then proceed to act. Ordinance No. 2418, Administration series, is hereby ratified and confirmed, and ordered to be carried out.

SEC. 10. *Be it further enacted, etc.*, That the board of directors of the public schools for the city of New Orleans be empowered to open and conduct a normal school for the city of New Orleans, and the committee on teachers shall be ex officio the committee on said school, and graduates thereof, after two years attendance, shall be noted as to proficiency, as required in section nine of act No. 36 of 1873, amended by this act, and graded, and receive certificates accordingly, as candidates for teachers under the provisions of the present act.

SEC. 11. *Be it further enacted, etc.*, That the certificates of qualification issued by the State Superintendent of Public Education after the passage of this act, shall entitle the holder thereof to rank on the list of candidates from which teachers are to be selected for any position in the high, normal, grammar, intermediate or primary schools, and the State Superintendent of [Public] Education is hereby required to furnish the school board with the names of such qualified persons, and the grade of certificate issued by him.

SEC. 12. *Be it further enacted, etc.*, That this act shall go into effect from and after its passage, and all laws, parts or provisions of law contrary thereto are hereby repealed.

ACT 133 OF 1880.

No. 133.] AN ACT

To liquidate the indebtedness of the city of New Orleans, and to apply its assets to the satisfaction thereof; to create a board of liquidation, and prescribe their duties; and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That for the purpose of liquidating, reducing and consolidating the debt of the city of New Orleans, as hereinafter specified, a permanent syndicate of six citizens of the said city is hereby created. The said syndicate shall be chosen as follows: two by the Governor of the State of Louisiana, two by the Lieutenant Governor, and two by the Speaker of the House of Representatives, and the Mayor of the city of New Orleans, the Treasurer and the Comptroller thereof, as hereinafter provided, shall be *ex officio* members of said syndicate; *provided*, that in case no change is made in the present city government, the present commissioners of the consolidated debt, shall act as *ex officio* members of said syndicate, and the members of the syndicate so named shall fill all vacancies in their number from death, resignation or otherwise.

SEC. 2. *Be it further enacted, etc.*, That the commissioners of the consolidated debt, or the city officers provided and named in section one of this act, and the *syndicate hereby created, shall* constitute a board of liquidation of the city debt, and the said board shall have exclusive control and direction of all matters relating to the bonded debt of the city of New Orleans. The board of liquidation shall cause to be prepared bonds of the city of New Orleans, which bonds shall be used only for the purpose of negotiation or of exchange, as hereafter provided. The said bonds shall be signed by the Mayor and countersigned by the Administrator of Accounts and of

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Finance, or such officer or officers as may be hereafter created to fill their respective functions. They shall be made payable in fifty years from the day of the approval of this act, and bear interest at the rate of four cent per annum, from the date of said bonds, payable, semi-annually, on the first day of April and October of each year, said interest represented by one hundred coupons annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the board of liquidation, and be made payable at such place or places as may be designated in the bond; but the said bonds shall be made payabfe, interest and principal, in lawful money of the United States; and the said board of liquidation shall be and it is hereby empowered and authorized to establish in New York, London, Paris and Amsterdam such agencies as they may see fit and desirable.

SEC. 3. *Be it further enacted, etc.*, That the board of liquidation of the city debt be and it is hereby authorized and empowered to retire and cancel *the entire valid debt* of the city of New Orleans, except the floating debt created up to the date of the passage of this act, whether represented by bonds of various classes or by judgments, either by the sale of the new bonds created under this act and appliance of proceeds to the purchase of such old obligations, or by exchange of the new bonds against said old obligations, on such terms as may be agreed upon between the holders of the said old obligations and the board of liquidation; *provided*, the new bonds shall not be sold for a less sum than eighty cents, in cash, on the dollar, and that no exchange shall be made at a greater rate than fifty cents in new bonds per one dollar of the face value of the old obligation with interest accrued thereon; *and provided further*, that the entire issue of new bonds sold or exchanged, as above provided, shall not exceed in all ten millions of dollars.

SEC. 4. *Be it further enacted, etc.*, That should any obligation of the city of New Orleans be deemed fraudulent or invalid, by any member of the board of liquidation, the same shall not be purchased, exchanged or retired until the holder of the same shall have applied to the proper court for relief, when, if final judgment be in his favor, it shall be deemed to be a valid obligation of the city; and should any member of the board of liquidation knowingly audit, fund, purchase or retire, for value, any illegal obligation of the city of New Orleans, or shall use any of the bonds herein authorized, or the proceeds thereof, or any of the city's assets or property in the hands of the board, by virtue of this act for purposes other than those contemplated in this act, he shall, on conviction thereof, be punished by fine of not less than one thousand dollars and imprisonment at hard labor for not less than one year.

SEC. 5. *Be it further enacted, etc.*, That it shall be the duty of the city authorities, as soon as possible after the organization of the board of liquidation of the city debt, to turn over and transfer to the said board all the property of the city of New Orleans, both real and personal, not dedicated to public use, and the board of liquidation shall be and is hereby empowered and authorized to dispose of said property on such terms and conditions as may be deemed favorable; the proceeds of such sale or sales to be deposited with the fiscal agent of the board at credit of "city debt fund."

SEC. 6. *Be it further enacted, etc.*, That nothing in this act shall be construed as affecting or in any manner impairing the Act 31 of 1876, commonly known as the "Premium Bond Act," but it will be the duty of the city authorities to turn over and transfer to the board of liquidation of the city debt all moneys collected on account of the tax levied in accordance with the provisions of the premium bond act; and it shall be the duty of the board

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of liquidation to apportion the proceeds of said tax and apply the same *pro rata* and in the proportion which each form of bonded debt shall bear to the entire amount of the city's debt; and such portions of the said proceeds of tax as shall not properly belong to the outstanding amount of premium bonds shall be applied to the payment of interest on the bonds created under this act.

SEC. 7. *Be it further enacted, etc.*, That it is hereby made a felony, punishable, on conviction, by fine not exceeding five hundred dollars and imprisonment at hard labor not exceeding ten years, for the fiscal agent or any member of the board of liquidation of the city debt to divert or misappropriate any portion of the debt and interest fund herein created from its legitimate channel, as provided.

SEC. 8. *Be it further enacted, etc.*, That the surplus arising from the collection of the debt and interest tax, or from the sale of assets in the hands of the board of liquidation of the city debt, after paying the interest coupons of the bonds issued under this act, shall be used for the purchase and retirement of any valid bonds of the city of New Orleans heretofore created at the rate not exceeding fifty cents per dollar, or, at the discretion of the board, for the retirement of the bonds created under this act at a price not exceeding par; and the bonds or obligations purchased, exchanged or retired shall be canceled and destroyed by the said board of liquidation, after public notice of the same shall have been given in the official journal of the city of New Orleans, and in the presence of such witnesses as may desire to attend. A *proces verbal* of the same, giving the amounts, numbers, dates and other particulars, for identification of the obligations destroyed, shall be made out and sworn to by a majority of the board of liquidation, and published within ten days of such destruction in the official journal of the city of New Orleans.

SEC. 9. *Be it further enacted, etc.*, That the board of liquidation is required and empowered to open, keep and regulate a special book of registry of bonds of the consolidated bond series of 1880, as follows, to-wit: Any holder or owner of any of the former or old bonds of the city, issued previous to the passage of this act, upon surrendering the same for cancelment, according to the provisions of this act, shall be entitled to have the amount and number of bonds due him registered in said book, in such manner and form as the board of liquidation may determine and prescribe, whereupon, instead of giving to said party a new bond, as contemplated by the preceding sections of this act, the board of liquidation shall grant to such party a certificate of registry, in such form as said board of liquidation may determine and prescribe, and said certificate to be transferable, in person or by proxy, on the records of the books of the board of liquidation, and the semi-annual on the amount of said certificates, instead of being represented by interest coupons, shall be payable to such party or his order in such form and manner as said board of liquidation may determine and prescribe; and the city of New Orleans shall cause a sufficient number of blank certificates of registry to be printed or engraved in the form and manner prescribed, and shall deliver said blanks to the board of liquidation, to be used agreeably to this section.

SEC. 10. *Be it further enacted, etc.*, That it shall be the duty of the Council of the city of New Orleans to provide a proper office for the board of liquidation of the city debt; but the expenses of engraving, printing and issuing the bonds created under this act, and all the necessary clerical and office expenses, shall be paid out of the funds appropriated and belonging to the payment of interest and principal of the said bonds; *provided*, that no member of the board of liquidation shall receive any salary or emolument of any kind for his services therein.

SEC. 11. *Be it further enacted, etc.*, That the City Council be and is hereby required to levy an annual tax, calculated upon the assessment of the preceding year, less twenty per cent., sufficient to pay in full the interest on all the bonds issued under the provisions of this act, and any tax levied shall continue in force until superceded by a new levy for the same purpose.

SEC. 12. *Be it further enacted, etc.*, That all parts of all laws in conflict with this act be and the same are hereby repealed.

ACT 67 OF 1884.

No. 67.] AN ACT

To amend and re-enact Sections 2, 3 and 5, of an act entitled "An Act to liquidate the indebtedness of the city of New Orleans, and to apply its assets to the satisfaction thereof; to create a Board of Liquidation, and prescribe their duties; and to provide for a fiscal agent, and for the levying of a sufficient tax to pay said interest," approved April 10, 1880; and to further provide for the redemption of the bonds authorized herein, the payment of the interest on the same, when said tax is not levied; and for the disposition and sale of said assets and other property.

WHEREAS, Due notice of the introduction of this act has been given, in accordance with Article 48 of the Constitution; and

WHEREAS, The legislation heretofore enacted, under Article 254 of the Constitution of the State, providing for the liquidation of the indebtedness of the city of New Orleans, has in part proved inoperative;

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That Section 2, of Act No. 133, approved April 10, 1880, be amended and re-enacted so as to read: That the commissioners of the consolidated debt, or the city officers, provided and named in Section 1 of this act, and the syndicate hereby created, shall constitute a Board of Liquidation of the city debt, and the said board shall have exclusive control and direction of all matters relating to the judgment and bonded debt of the city of New Orleans. The Board of Liquidation shall cause to be prepared bonds of the city of New Orleans, which bonds shall only be used for the purpose of negotiation or exchange, as hereinafter provided. The said bonds shall be signed by the Mayor and Treasurer of the city of New Orleans, and countersigned by the Comptroller of said city; they shall be dated June 1, 1884, and be made payable in fifty years from said date, or sooner, at the option of the city, and bear interest at the rate of five per cent. per annum from the date of said bonds, pay-

able semi-annually on the first days of June and December of each year; said interest to be represented by one hundred coupons annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the Board of Liquidation, and be made payable at such place or places as may be designated in the bond, but the said bonds shall be made payable, interest and principal, in lawful money of the United States.

SEC. 2. *Be it further enacted, etc.*, That Section 3, of Act No. 133, approved April 10, 1880, be amended and re-enacted so as to read: That the said Board of Liquidation of the city debt be and it is hereby authorized and required, and it is made the duty of the said board, to retire and cancel the entire debt of the city of New Orleans *now in the form of executory judgments* and registered, under the provisions of Act No. 5, of 1870, and that which hereafter may become merged into executory judgments and likewise registered; except the floating debt or claims created for and against the year 1879, and subsequent years; that it is the full intent and meaning of this act to apply solely the privileges thereof to executory judgments, *at present rendered against such city*, and to such floating debt or claims against said city for 1878, and previous years merged and to be merged into executory judgments, whether absolute or rendered against the revenues of any particular year or years, previous to the year 1879; that for the purpose of retiring and canceling said judgment debt, the said board is authorized and required either to sell the bonds to be issued under this act at not less than their par value and apply the proceeds thereof to the payment of the said judgments, as above specified, or issue said bonds in exchange for said judgments.

SEC. 3. *Be it further enacted, etc.*, That Section 5 of Act No. 133, approved April 10, 1880, be amended and re-enacted so as to read: That it shall be the duty of the

city of New Orleans to turn over and transfer to the Board of Liquidation, immediately after the passage of this act, all property of the city of New Orleans, real and personal, not dedicated to public use; *provided*, that in the sale of batture property, which is herein included, the right of the city to all future accretions shall be reserved, all assets of said city realized, and to be realized, except such assets and revenues as pertain to the administration of said city, and necessary for the support of the same as at present authorized, all uncollected revenues of said city anterior to the year 1879, when collected; and the said board is hereby authorized and required to dispose of said property and assets, other than stock held in corporations, on such terms and conditions as said board may deem to be to the best interests of the city, and apply the proceeds thereof, together with the uncollected revenues above mentioned, when the same are collected: *First*, to the payment of the interest on the bonds authorized herein in the event that the tax authorized by Section 11 of said Act No. 133, approved April 10, 1880, be not levied; *Second*, to the redemption and cancellation of the said bonds; *provided*, that bids for the sale of the same shall be by sealed proposals, and that preference shall be given to the lowest bidder; and *provided further*, that no bids above the par value of said bonds shall be accepted.

SEC. 4. *Be it further enacted, etc.*, That for the further redemption of said bonds the said Board of Liquidation is hereby authorized and required after each and every allotment of series following the passage of this act, to advertise for sealed proposals for the exchange of drawn premium bonds in possession of the city for the bonds authorized herein to the amount of fifty thousand dollars, of said bonds issued under this act; *provided*, that no exchange be made unless preference be given to the lowest bidder.

SEC. 5. *Be it further enacted, etc.*, That nothing shall

herein be construed as in any manner affecting or interfering with the disposal of property of said city, created under the provisions of Act No. 33, approved March 31, 1877, otherwise than is provided for in Section 14 of said act.

SEC. 6. *Be it further enacted, etc.*, That all laws or parts of laws in conflict herewith be and the same are hereby repealed.

ACT 110 OF 1890.

No. 110.] JOINT RESOLUTIONS.

Proposing an amendment to the Constitution providing for the funding of the funded debt of the city of New Orleans, other than Premium Bonds, into four per cent bonds; providing a special tax of one per cent to pay the bonded debt of the city, and exempting the said four per cent bonds from taxation, and further authorizing the said city to assume and pay such unpaid claims of the Board of School Directors of said city and parish which it may find to be equitably due by said board.

SECTION 1. *Be it resolved by the Senate and House of Representatives of the State of Louisiana, two thirds of all the members elected to each house concurring*, That the following amendments to the Constitution of the State be submitted to the electors of the State at the next election for Representatives for the General Assembly in the year 1892, for the purpose of retiring the now existing valid outstanding bonds of the city of New Orleans, including the bond certificates or bonds issued under the act of the Legislature No. 58 of 1882 and to retire judgments now or hereafter rendered against the city on floating debt claims prior to 1879, entitled to be funded under act No. 67 of 1884, the said city of New Orleans is hereby authorized and directed, on and after the adoption of this amendment, to issue through the Board of Liquidation of the City Debt, bonds to be known as the Constitutional Bonds of the City of New Orleans, not exceeding ten millions of dollars, at fifty years, bearing four per cent per annum interest, to bear date and be in the form prescribed by the Legislature. The said bonds shall be applied by the said board to the retirement of said outstanding bonds and judgments, by the sale of said Constitutional Bonds, and application of the proceeds of sale by the Board of Liquidation, to pay or purchase said outstanding bonds and judgments, or by exchanging the said constitutional bonds for bonds, on the terms and in the mode prescribed by the Legisla-

ture. For the payment of the interest and principal at maturity, of said constitutional bonds, and other outstanding bonds not retired under this amendment, and for the payment of the annual allotments and premiums of the premium bonds of said city, the said city is hereby authorized and directed to levy annually, and until the full payment of said bonds, a special tax of one per cent. on all the real and personal property of the city, said tax to be part of, and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of valuation now levied for all purposes by the city of New Orleans, and the said tax shall be paid over as collected to, and be applied by the Board of Liquidation, to the payment of the interest and principal at maturity of said Constitutional bonds, and outstanding bonds not retired, and to the payment of the allotments of Premium bonds and premiums extant, in the hands of holders.

Said tax is hereby declared to be the contract right of the holders of all said bonds; and the exemption of said Constitutional bonds from all taxation by the City of New Orleans and State of Louisiana, is hereby recognized and declared, and after the payment of all the annual interest on said Constitutional bonds and bonds not retired and the payment of the said annual allotments of premium bonds and premiums extant in the hands of holders, and after making provisions for a sinking fund, at such time and of such an amount as the Legislature prescribes, the surplus of said one per cent. shall be disposed of as prescribed by the Legislature.

The act passed at the present session No. 36 entitled "An act to carry into effect the Constitutional amendment passed at the present session relative to the bond debt of the city of New Orleans," etc., be and is hereby approved and confirmed in all its parts as a contract between the city of New Orleans and the holders of the aforesaid Con-

stitutional bonds, Premium bonds and of the bonds outstanding not retired as aforesaid.

SEC. 2. *Be it further resolved, etc.*, That the city of New Orleans be and is hereby authorized and empowered to examine into and assume the payment of the claims or obligations of the Board of School Directors for the city and parish of Orleans due for the years 1880, 1881, 1882, 1883 and 1884, now in the hands of original owners, who have in nowise parted with their right of ownership or pledged the same, as may be found to be equitably due by said board for services rendered, labor performed or materials furnished by authority of said board.

SEC. 3. *Be it further resolved, etc*,, That all electors voting at said election for said amendment shall place upon their ballots, the words "For the city of New Orleans debt amendment," and all electors voting at said election against said amendment shall place on their ballots, "Against the city of New Orleans debt amendment."

AN ACT

To carry into effect the constitutional amendment passed at the present session of the Legislature, relative to the bond debt of the city of New Orleans, and to authorize and direct the said city to issue through the Board of Liquidation of the city debt, four per cent. bonds to be known as the Constitutional bonds of the city of New Orleans, payable fifty years from date; and to direct the retirement of the now outstanding bond debt of said city, premium bonds excepted, by the sale of said Constitutional bonds and application of proceeds by the Board of Liquidation to the payment of said outstanding bonds, premium bonds excepted, and to the payment also of certain judgments against the city on floating debt claims created prior to 1879, and to authorize the purchase by said board of said outstanding bonds, other than premium bonds, or, the exchange thereof for said Constitutional bonds, and for the payment of said Constitutional bonds and of the aforesaid outstanding bonds, not retired under this act, and for the payment of the annual allotment of premium bonds and premiums; to direct the levy and collection by the city of the tax of one per cent. now levied for the bond debt, and to direct the payment to and application by the Board of Liquidation of said taxes, to the purposes aforesaid for which it is levied, and to provide a sinking fund for said Constitutional bonds; and for the disposition of the surplus of said tax not required for the aforesaid bond debt, and to recognize said tax as the contract right of the holders of the aforesaid bonds, and to recognize also the exemption of said Constitutional bonds from all taxation, and to define the functions and powers of said Board of Liquidation.

Whereas, Due notice of intention to apply for the passage of this act having been advertised, as required by article 48 of the Constitution.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That, in order to provide for the retirement of the outstanding bond indebtedness of the city of New Orleans, and such other indebtedness as under existing laws, is or becomes entitled to be funded into any series of bonds, always saving and excepting, however, the bonds known as premium bonds, the city of New Orleans is authorized, empowered and directed to issue bonds to the amount of ten millions of dollars; nine thousand of which bonds shall be for one thousand dollars each, and two thousand of which shall be for five hundred dollars each, to be known as the "Constitutional Bonds of the City of New Orleans," dated July 1st, 1892, payable

fifty years after date, with the right to call by lot not more than seven hundred thousand dollars per annum after the year 1925, bearing four per cent. per annum interest, payable semi-annually and represented by interest coupons attached thereto.

Said bonds shall be numbered, those of one thousand from one to nine (9) thousand, and those of ($500) five hundred each from one to two thousand ($2000), and shall be signed by the Mayor and Comptroller of the city of New Orleans, and delivered to the board of liquidation of the city debt, to be used for the purposes aforesaid in accordance with the provisions of this act.

Each of said bonds shall, at the time of its issuance by the said Board of Liquidation and not at any time anterior thereto, be countersigned by the president and secretary of said board; and a daily report shall be made to the Mayor by said Secretary of the number of the bonds so countersigned and delivered, and the purpose for which they were issued.

These daily reports shall be laid before the City Council by the Mayor; and the finance committee of said council is required to examine and verify said reports at least once a month, and to report the result of their examination and verification to the council.

SEC. 2. *Be it further enacted, etc.*, That the Board of Liquidation is hereby authorized and empowered to sell and dispose of such amounts of said Constitutional bonds as may be deemed requisite for the purposes hereinafter expressed, the sales of bonds to be made on sealed proposals or bids to purchase to be invited by advertisements published at least five times during the period of thirty days, in one or more newspapers in the city of New Orleans and the city of New York, and no sale to be made before said delay and advertisement, the bonds to be sold to the highest bidder if the bid is deemed acceptable, but the board is to have the right to reject all bids, the bonds

to be sold at the highest premium obtainable, and no sale shall be made at less than par.

Said advertisements shall provide that all accepted sales shall be consummated by the payment of the price bid, and the delivery of the bonds purchased at least three days before the date of the maturity or of the call date of the bonds that are proposed to be purchased with the funds derived from the sales; where bonds are sold to pay judgments as hereinafter provided, the advertisements shall provide for the payment of the price, and the delivery of the bonds on a fixed day, and all past due interest coupons on the bonds sold shall be cut off and cancelled before delivery to the purchasers, and provided no sale of said constitutional bonds shall be made more than thirty days in advance of the period when the funds are needed for the payment or purchase of bonds.

SEC. 3. *Be it further enacted, etc.*, That all the funds received by said Board of Liquidation from the sale of Constitutional bonds, shall be immediately deposited with the fiscal agent of the city of New Orleans, or if the fiscal agent is not satisfactory in the opinion of the board, with a chartered depositary selected by the board to the credit of a special fund called the "Bond Sales Fund," which said fund shall be used solely and exclusively for the purpose of retiring by payment all the said now outstanding valid bonds of the city of New Orleans matured or subject to be called, including the certificates or bonds issued under the fourth section of the Act No. 58 of 1882, and including judgments now or hereafter rendered on floating debt claims prior to 1879, entitled to be funded under Act No. 67 of 1884, but excluding premium bonds issued under the Act No. 31 of 1876, not to be retired under this act, and the interest upon all said bonds subject to call, shall cease after publication of the calls, as now provided by existing laws; no check shall be honored on said fund unless accompanied by a certificate signed by the presi-

dent and secretary of said board, describing the bonds it is intended to retire, and certifying that said bonds have been surrendered to said board and cancelled, or describing the judgments to be paid and annexing a certificate of its satisfaction.

SEC. 4. *Be it further enacted, etc.*, That after the payment of all the aforesaid outstanding bonds subject to call or matured, as provided in section 3 of this act, the Board of Liquidation with the fund derived from the sale of Constitutional bonds, shall have the power to purchase the unmatured outstanding bonds of the city, premium bonds always excepted, and to this end, the board by advertisement published once a week in one or more newspapers in the City of New Orleans and the City of New York for the space of thirty days, shall invite sealed proposals from the holders to sell said outstanding bonds, and the board is authorized if deemed judicious to purchase said out;tanding bonds at the lowest price named in the proposals, but is to be under no obligation to accept, but may in its discretion reject any and all proposals; no purchase of outstanding bonds shall ever be made without the assent of the City Council, and in case of said purchase, the check for the purchase price of the bonds shall be accompanied by a certificate signed by the president and secretary of said board, describing the bonds purchased and certifying that the bonds have been surrendered and cancelled, and provided further that no purchase of said outstanding bonds shall ever be made at any price higher than the face of the bond with accrued interest.

SEC. 5. *Be it further enacted, etc.*, That after the payment of all the aforesaid outstanding bonds subject to call or matured, as provided in section 3 of this act, the board is hereby authorized and empowered to exchange for the valid outstanding bonds of the city of New Orleans, save and except premium bonds, such an amount of the Constitutional bonds as may be requisite for the purpose of

said exchange, said exchange of the Constitutional bonds issued under this act for said bonds surrendered in exchange to be made on the terms and conditions as follows: the board by advertisement inserted in one or more newspapers in the city of New Orleans and city of New York, to be published three or more times for and during the space of thirty days, shall invite proposals to exchange said outstanding bonds for the Constitutional bonds authorized by this act; the board shall be under no obligation whatever to accept any bid or proposal, but in its discretion is hereby authorized and empowered only if it sees fit to exchange said Constitutional bonds at the lowest price or rates of exchange specified in the said bid or proposals for said bonds surrendered in exchange; *provided*, however, the board shall use its best efforts to secure as high a premium as possible for the said Constitutional bonds, and and in no case shall said Constitutional bonds be exchanged at any rate less than the par thereof and *provided further*, that no exchange shall be made for said bonds surrendered in exchange at any rate higher than their par with accrued interest, and *provided further*, that a process verbal shall be prepared and put on file by the board of the numbers and amounts of the bonds surrendered in exchange and at the rate at which they were surrendered and of the numbers and amounts of the Constitutional bonds issued in exchange, and at the rate at which they were issued, stating also the date of the exchange, and *provided further*, that no exchange shall ever be made without the previous assent of the city council.

SEC. 6. *Be it further enacted, etc.*, That all bonds retired under the provisions of this act, shall be immediately cancelled by perforating the same and the attached coupons; and such cancelled bonds and coupons shall not be destroyed but shall be kept by said board as vouchers, and shall be pasted in the bonds books, in accordance with the

system, and for many years past in vogue in the conduct of the business by said board.

The same method shall be pursued with reference to all bonds and coupons retired with the sinking fund herein provided, and all coupons paid year by year.

SEC. 7. *Be it further enacted, etc.*, That in order to provide for the payment of the principal and interest of the Constitutional bonds, herein authorized to be issued, and of all other outstanding valid bonds of the city of New Orleans, it shall be the duty of the council and and proper officers of the city of New Orleans to levy, for the year 1892, and annually thereafter, until the principal and interest of the bonds, herein provided to be issued, are fully paid, a special ad valorem tax of one per cent. upon all the taxable property, real, personal and mixed, in the city of New Orleans; said special tax to be a part of and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of valuation now levied for all purposes by the city of New Orleans. The proceeds of said special tax shall be paid over to the fiscal agent or depository of the Board of Liquidation, to the credit of said board, day by day, as the same is collected by the proper officials of said city; and neither the said city, nor any of its officers, shall have the custody, control, disposition or expenditure of said tax, or any part thereof, except as herein provided. In case the said city, at any time, shall fail or neglect to levy and collect said special tax, or in case the municipal government of the city should be abolished, or in case present territory of the city of New Orleans should be transferred to other municipal corporations, and no proper and efficient provision is made by law to compel those municipal governments to levy and collect said special annual tax of one per cent.; or, in case said municipal corporations refuse or neglect to exercise to this end a proper and efficient taxing power bestowed upon them, then, in any of these events, the said Board of Liquidation shall itself, by proper

resolution, have power to levy said tax, and to collect the same; and, in said levy and collection, to use any and all the machinery, rights, powers and authority established by the State for the levy and collection of the State taxes; and in case it should become necessary under the above mentioned or similar circumstances, for the said Board of Liquidation to levy and collect said tax, and said board should refuse or neglect to do so, any court of competent jurisdiction, shall, on application of any bondholder, have power to decree the levy of said special tax throughout the said territory, and to have the same collected by the sheriff, or executive officer of the court, and the proceeds applied to the payment of the interest and principal of said bonds. In case any such decree is entered, the sheriff or executive officer of the court, shall have all the powers, rights and authority granted by law by the State to her own tax collectors.

SEC. 8. *Be it further enacted, etc.*, That out of the proceeds of said one per cent. per annum tax, beginning in the year 1892, the said Board of Liquidation shall annually provide for the carrying of the premium bond plan, the payment of the interest upon the bonds herein authorized to be issued, and of the interest upon all other outstanding interest bearing bonds of the city of New Orleans, and after the year 1925, for the annual sinking fund necessary to call and retire the nunber of bonds provided for in section 9 of this act. After making, in each year, the provisions above required, and after deducting the expenses incurred by said board, and after paying any deficiency in the interest fund of any previous years, one-half of the surplus of said tax shall be passed to the credit of a special fund, to be known as the "permanent Public Improvement Fund," to be disposed of as hereinafter provided; the other half of said surplus shall be paid over to the School Board of the city of New Orleans, in addition to any fund appropriated by said city out of other funds,

to be used in the maintenance and support of the public schools in said city.

SEC. 9. *Be it further enacted, etc.*, That, commencing with the year 1926, five hundred thousand dollars of Constitutional bonds shall be annually called and retired by said board in the manner herein provided, with funds derived from the proceeds of said tax of one per cent.; and commencing with the year 1937, seven hundred thousand dollars of said Constitutional bonds shall be annually called and retired, in the manner herein provided, with said funds. In order to determine each year what bonds shall be called and retired, the number of all outstanding bonds shall be placed in a wheel on the first Monday of July in each year, commencing with the year 1926, and five hundred numbers, or seven hundred numbers, as the case may be, shall be drawn out, two numbers of the five hundred dollar bonds counting as one. The numbers of the bonds so drawn shall be published in New York and New Orleans for thirty days together with a notice that said bonds must be presented for payment on the ensuing first of January; and that after that date all interest will stop on said bonds. All bonds so paid shall be cancelled as soon as delivered to said board in the manner specified in section 6 of this act, and detailed report thereof made by the Secretary of the board to the Mayor, who shall lay the same before the council for examination and verification by the Finance Committee thereof.

SEC. 10. *Be it further enacted, etc.*, That, the "Permanent Public Improvement Fund," above provided for, shall be used exclusively for the construction of permanent public improvements in the city of New Orleans, such as levees, canals, drainage stations, pavements, public buildings, public parks and bridges, and all ordinances passed by the city council to be paid out of this fund, shall first be approved by the said Board of Liquidation, who shall not draw any check on said fund, unless they are con-

vinced, upon proper inquiry, that said ordinance covers the construction of a permanent public improvement, within the purview of this act. The true interest and meaning of this clause is not to give said board any authority to say to what permanent public improvement any fund shall be applied, but only to see that said funds shall be applied exclusively to the construction of improvements that are permanent.

SEC. 11. *Be it further enacted, etc.*, That the Board of Liquidation of the City Debt, established by Act No. 133, of the Acts of 1880, as now constituted, is hereby created a body corporate, with right of existence and succession until January 1st, 1943, with power to sue and be sued, to have a corporate seal, to make reasonable rules and regulations for the conduct of its business, and to employ counsel and a reasonable clerical force. None of its members shall receive any compensation for his services. One of its members shall be elected president, and another vice-president, who shall act in the absence or disability of the President. They shall select a secretary (not a member of the board), who shall give bond for the faithful performance of his duties in the sum of twenty thousand dollars ($20,000), and this bond shall be renewed every three years. He shall receive a salary, to be fixed by the board, not to exceed thirty-five hundred dollars ($3500) per annum, and shall hold his office at the pleasure of the board. Their funds shall be deposited with the fiscal agent of the city of New Orleans, or with some chartered bank in the City of New Orleans selected by the board. The City of New Orleans shall provide, in the city hall or elsewhere, proper offices and quarters for said board and its officers, books, records and archives. The clerical office expenses, counsel fees, and the cost of all printing and engraving bonds under this act shall be paid from said tax fund. On the first of January and July of each year, said board shall make, in printed form, to the city council,

a detailed report of all its receipts and all its expenditures, and of its transactions and doings under the provisions of this act, with the names of all its employes, and the amount of compensation paid to each. Nothing in this act contained shall be construed to affect or change in any manner the duties, powers and functions of the Board of Liquidation under existing laws, not inconsistent with this act, or the rights of said board to the assets and property of the city not dedicated to public use, including the uncollected taxes prior to 1879; but said duties, functions, rights and powers are maintained and confirmed in full force.

SEC. 12. *Be it further enacted, etc.*, That any member of said Board of Liquidation who removes his domicile from the city of New Orleans, or who is convicted of any crime against the State, or who is declared insolvent or bankrupt, or who becomes incapacitated to perform his duties, shall forfeit his membership, and it shall be the duty of said board to declare his membership vacant, and to elect his successor. Any member may be removed by a two-third vote of the whole board, for misfeasance, malfeasance in office, or for neglect of his duties as a member; or he may be removed on similar grounds by any court of competent jurisdiction at the suit of any bondholder, or ten tax payers.

SEC. 13. *Be it further enacted, etc.*, That in case all, or the majority of the members of said board, should for any reason become vacant, so as to prevent a quorum of said board, any court of competent jurisdiction shall have power and authority, on the application of holders of at least ten thousand dollars ($10,000) of said Constitutional bonds, to be had contradictorily with the city of New Orleans and the surviving members of the board, if any there be, to fill enough of said vacancies to constitute a quorum, and the quorum so obtained shall fill the remainder of the vacancies.

SEC. 14. *Be it further enacted, etc.*, That said board shall have power, with the concurrence of the City Council, to make and publish reasonable and proper rules for the registry of the bonds to be issued under this act.

SEC. 15. *Be it further enacted, etc.*, That said Constitutional bonds shall be exempt from all taxation State, parish and municipal.

SEC. 16. *Be it further enacted, etc.*, That all of the substantial provisions of this act are hereby declared to be a contract between the State of Louisiana, the city of New Orleans, the tax payers of said city and each and every holder of said Constitutional bonds.

SEC. 17. *Be it further enacted, etc.*, That the Board of Liquidation shall immediately cease extending outstanding bonds under the act No. 58 of 1882.

SEC. 18. *Be it further enacted, etc.*, That nothing in this act contained shall be construed to affect or disturb, in any manner, the existing right to the tax now levied for premium bonds and for said outstanding bonds, not retired, said tax being preserved in full force, and the payment of the allotment of premium bonds and premiums extant in the hands of holders, and of the interest and principal at maturity of all outstanding bonds that may not be retired under this act shall continue as now directed under existing laws; said tax of one per cent. being levied for premium bonds and outstanding bonds, not retired, as well as for the aforesaid Constitutional bonds substituted for the outstanding bonds paid, purchased or retired by exchanges under this act.

SEC. 19. *Be it further enacted, etc.*, That the general provisions of this act shall not take effect until the adoption of the aforesaid Constitutional amendment; provided, however, that portion of the act prohibiting the further extension of bonds under the Act No. 58 of 1882 shall go into effect immediately, and all laws or parts of laws contrary to or inconsistent herewith be and the same are hereby repealed.

ACT 114 OF 1896.

No. 114.] AN ACT

To provide for the drainage of the city of New Orleans: to establish the Drainage Commission of New Orleans: to provide ways, means and funds for such drainage; to provide for the issue and payment of bonds and to direct the co-operation of the Board of Commissioners of the Orleans Levee District:

Whereas due notice under Article 48 of the Constitution has been given of the intention to apply to the Legislature for the passage of this act:

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That a board is hereby established to be called the Drainage Commission of New Orleans, which shall be composed as follows, to-wit: Of the Mayor of New Orleans, the chairman of the Council Committees of Finance, of Budget, and of Water and Drainage, of the president of the Board of Commissioners of the Orleans Levee District, and two other members of said board, selected by it; of the president of the Board of Liquidation of the City Debt of New Orleans, and one other member of said board to be selected by it, being nine members in all; and said commission, by its said name, shall have all the powers and succession of a body politic and corporate.

SEC. 2. Be it further enacted, etc., That said commission shall organize by selecting one of its members as president and some competent person as secretary. It shall have power to make by-laws and rules for its own government, and to define the duties of its officers and committees, and to change the same by a vote of two-thirds of its members. It shall hold regular meetings on such days as it may determine, and shall call special meetings, as may be provided for in its by-laws. All meetings of said commission, or any committee, or special committees it may appoint, shall at all times be open and

public, and its books, papers, documents and records, shall be public records.

And it is hereby made the duty of the government of the city of New Orleans to provide suitable offices for said commission, wherein its meetings shall be held and its books, papers, documents and records shall be kept.

SEC. 3. Be it further enacted, etc., That that portion of the funds in the hands of the Board of Liquidation under the provisions of Sections 6 and 10 of Act No. 110 of the General Assembly of Louisiana of 1890, accruing to public works, etc., from January 1, 1898, is hereby dedicated and applied to the purposes of this act; and all monies and funds now under the control of the city of New Orleans and hereafter to be received, arising from the sale of street railroad franchises or other franchises, are also hereby dedicated and applied to the purposes of this act.

All monies or funds thus hereby dedicated shall be drawn and expended by said Drainage Commission by checks signed by the president and secretary and countersigned by the mayor.

SEC. 4. Be it further enacted, etc., That said commission shall have full power to control and execute the drainage of the city of New Orleans, and may proceed to execute and carry out substantially the plan for such drainage, adopted by the Council of said city, by Ordinance 10,091, Council Series, approved July 10, 1895, so far as it may find said plan desirable and practicable, with the right however to modify the same as in its judgment circumstances may require.

It shall have power to make rules and regulations for the protection and conservation of all works under its control, both completed and uncompleted, and of all works necessary or incidental thereto, and any violation of the rules and regulations established by the said commission,

and duly promulgated in the Official Journal, shall be punished by a fine not exceeding $25 for each offence, or by thirty days imprisonment for each offence, or by both, in the discretion of the Recorder.

It shall be the duty of the city of New Orleans, at the request of said commission, to transfer to the custody and control of the said commission so much of the existing drainage plant or plants of the city of New Orleans as the said commission may deem necessary for their purposes; provided however, that the said city of New Orleans shall always, out of her general budget, provide the necessary funds to run all drainage machines now in existence or that may hereafter be established by the commission, the true intent and meaning of this act being that the funds of the commission shall be applied only to the construction of permanent public works, and no part thereof shall be applied to the operation of said works.

Nothing in this section shall be construed as compelling the commission to take charge of any of the present existing systems unless in their judgment it may be advisable to do so.

SEC. 5. Be it further enacted, etc., That all work done or supplies and materials ordered by said commission, of every kind and nature, except emergency work in times of extreme peril from storm or flood, shall be let by contract to the lowest responsible bidder, by sealed proposals, or by public auction, as the commission may determine, after at least thirty days' advertisement in two newspapers in the city of New Orleans, on approved specifications, one of which specifications shall always be that the contractor shall give bond, with security satisfactory to the commission in at least one-fifth of the amount of his bid for the faithful performance of his contract; and in case the work estimated by the said specifications shall exceed the sum of fifty thousand dollars, bids for the

same shall be similarly advertised in New York and Chicago, as well as in the city of New Orleans.

In all cases the right shall be reserved by the commission to reject any and all bids.

SEC. 6. Be it further enacted, etc., That the works performed by said commission shall, so far as possible, be done in such manner as to benefit all parts of the city without discrimination as to locality, and in order to raise funds for the purpose of doing such work speedily and on an extensive scale, said Drainage Commission of New Orleans shall have power to issue and dispose of its negotiable bonds to an amount not exceeding five millions of dollars in denominations of $20, $50, $100, $500 and $1000, bearing interest at a rate not exceeding five per centum per annum, payable semi-annually, to be sold by said commission at not less than par. Said bonds shall have forty years to run, and shall, when issued and not before, be executed by the president and attested by the secretary, under the seal of the commission, shall be payable to bearer and shall have semi-annual interest coupons attached bearing the engraved signature of the president. All monies and funds dedicated and applied by this act to the purposes thereof are consecrated to the payment of the principal and interest on said bonds, and the commission after the year 1920, shall have the right to call in by lot not exceeding two hundred thousand dollars of said bonds in July of each year. The numbers of the bonds so drawn by lot, together with notice that such bonds will be paid on the ensuing first of January, and that interest thereon will then cease, shall be published in a New Orleans newspaper for thirty days.

SEC. 7. Be it further enacted, etc., That all the provisions of this act respecting the dedication and application of funds and money shall constitute a contract with the holder or holders of bonds issued as aforesaid, the obligation of which contract shall not be impaired and may

be enforced by any holder of said bonds by proceedings of mandamus and injunction or by other proper proceedings in court.

SEC. 8. Be it further enacted, etc., That said commission shall have power to employ such engineers and counsel as it may find necessary in the progress and execution of its work; and shall have the power to expropriate property according to existing laws, by legal proceedings in its name and the right in all streets, and in and over all lands of the State and city in New Orleans, or in the parish of St. Bernard, is hereby granted to said commission for any of its works.

SEC. 9. Be it further enacted, etc., That it shall be the right and duty of the Board of Commissioners of the Orleans Levee District, in the exercise of its obligations under Act 79 of 1892, to co-operate with the Drainage Commission, in executing the plans of said commission, and in order to make such co-operation more effective the said Board of Commissioners of the Orleans Levee District shall have the power and authority to continue the levy of the tax of one mill on the dollar provided for in Sec. 5 of Act 93 of 1890, until the completion of the levee and drainage systems of the city of New Orleans.

SEC. 10. Be it further enacted, etc., That the said commission shall semi-annually, beginning on the first day of January, 1897, make to the Common Council of the city of New Orleans, a full and detailed report of all sums received and sums expended, the purposes for which expended, and a statement of the progress and character of the work contracted for and performed during the previous six months, and the said commission shall, from time to time, if so required by the council, present special reports as they may be demanded.

SEC. 11. Be it further enacted, etc., That no member of the said commission shall receive any compensation whatever for his services as a commissioner, except trav-

eling expenses incurred in behalf of the commission.

SEC. 12. Be it further enacted, etc., That no member of said commission shall ever be interested in any contract or in the profits of any contract made by said commission, nor for six months after the termination of his connection with the commission, under the penalty of the absolute nullity of said contract, nor shall any member of said commission ever be surety for any contractor or officer of the commission.

SEC. 13. Be it further enacted, etc.; That all laws and parts of laws in conflict with this act are repealed, and this act shall be liberally construed to effect its object.

ACT 63 OF 1898.

No. 63]. AN ACT

To amend and re-enact Sections 6, 7 and 8, of Act No. 114, of 1896, entitled "An act to provide for the drainage of the City of New Orleans; to provide ways, means and funds for such drainage; to provide for the issue of bonds, and to direct the co-operation of the Board of Commissioners of the Orleans Levee District;" and to provide for flushing in connection with such drainage.

Whereas, due notice under Article 50 of the Constitution has been given of the intention to apply to the General Assembly for the passage of this act.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That Sections 6, 7 and 8, of Act No. 114 of 1896, approved July 9th, 1896, be and the same are hereby amended and re-enacted so as to read as follows:

SECTION 6. Be it further enacted, etc., That the works performed by said Commission shall, so far as possible, be done in such manner as to benefit all parts of the city without discrimination as to locality, and in order to raise funds for the purpose of doing such work speedily and on an extensive scale, said Drainage Commission of New Orleans shall have the power to issue and dispose of its negotiable bonds to an amount not exceeding one million, five hundred thousand dollars, in denominations of $1,000 each, bearing interest at the rate of five per centum per annum, payable semi-annually, to be sold by said Commission at not less than par. Said bonds shall have forty years to run from November 1, 1897, and shall when issued, and not before, be executed by the President and attested by the Secretary under the seal of the Commission; shall be payable to bearer, and shall have semi-annual interest coupons attached bearing the engraved signature of the President. Such bonds may also be registered under such regulations as said Commission may prescribe. All monies and funds dedicated and applied by this act to the purposes thereof are primarily conse-

crated to the payment of the interest on said bonds; and the redemption of the principal thereof, as hereinafter provided, but any surplus of said funds inuring to said Commission from taxes of 1899, 1900, 1901 and 1902, and from other sources prior to January 1st, 1903, not required to pay current interest on said bonds may be used for the general purposes of said Commission. The Commission, after year 1920 shall have the right, and it shall be its duty, to call in and pay not exceeding two hundred thousand dollars of said bonds in July of each year, and in the order of their issue, beginning with number one. The numbers of the bonds so called in together with notice that said bonds will be paid on the ensuing first of January, and that interest thereon will then cease, shall be published in a New Orleans newspaper for thirty days. Said Commission may also agree with any holder of said bonds that the same may be called in at any time after November 1, 1899. Any bonds which may be hereafter authorized in excess of above amount of $1,500.00 shall be subordinate to issue above limited.

SECTION 7. Be it further enacted, etc., That all the provisions of this act, respecting the dedication and application of funds and monies shall constitute a contract primarily with the holder or holders of said bonds, as aforesaid, to the extent aforesaid, and also with each and every person or corporation that may have entered into contracts with the said Commission; and the obligation of said contract as to dedication and application of funds and monies shall not be impaired, and may be enforced by any holder of said bonds, or by any contract creditor of said Commission, by proceedings of mandamus and injunction, or by other proper proceedings in court.

And in case said Drainage Commission shall cease to exist for any cause prior to the full payment of said bonds in principal and interest, or shall fail to comply with the provisions of this act in regard to the application of said

funds and money, the Board of Liquidation of the city debt shall be charged with the right and duty of applying said funds and monies to the payment of said bonds in principal and interest according to the provisions and intent of this act.

SEC. 8. Be it further enacted, etc., That said Commission shall have power to employ such engineers and counsel as it may find necessary in the progress and execution of its work, and shall have the power to expropriate property according to existing laws by legal proceedings in its name, in the Parishes of Orleans, Jefferson or St. Bernard; and the right in all streets and in and over all lands of the State in the Parish of Orleans and of the City of New Orleans, and in and over all lands of the State in the Parishes of Jefferson and St. Bernard, is hereby granted to said Commission for any of its works. Said Commission shall also have the right to arrange its Power Houses and the disposition of the electric energy thereby generated, in such way, and to construct such conductors, motors, flushing apparatus and other appliances, as will enable the City of New Orleans to flush gutters from the Mississippi River.

Art. 254. The school funds of the State shall consist of: 1st. Not less than one and one quarter mills of the six mills tax levied and collected by the State. 2d. The proceeds of taxation for school purposes as provided by this Constitution. 3d. The interest on the proceeds of all public lands heretofore granted or to be granted by the United States for the support of the public schools, and the revenue derived from such lands as may still remain unsold. 4th. Of lands and other property heretofore or hereafter bequeathed, granted or donated to the State for school purposes. 5th. All funds and property, other than unimproved lands, bequeathed or granted to the State, not designated for any other purpose. 6th. The proceeds of vacant estates falling under the law to the State of Louisiana. 7th. The Legislature may appropriate to the same fund the proceeds of public lands not designated or set apart for any other purpose, and shall provide that every parish may levy a tax for the public schools therein, which shall not exceed the entire State tax; provided that with such a tax the whole amount of parish taxes shall not exceed the limits of parish taxation fixed by this Constitution. The city of New Orleans shall make such appropriation for the support, maintenance and repair of the public schools of said city as it may deem proper, but not less than eight tenths of one mill for any one year; and said schools shall also continue to receive from the Board of Liquidation of the City Debt, the amounts to which they are now entitled under the Constitutional amendment, adopted in the year 1892.

Art. 313. All surplus revenues of the city of New Orleans from the year 1879 to the year 1895, both inclu-

sive, except the surplus revenue dedicated to permanent public improvement, and to schools, by Act No. 110 of 1890, derived from the one per cent. tax levied under said act, shall be turned over by the city to the Board of Liquidation of the City Debt. Said board shall redeem all claims evidenced by financial ordinance or judgment against the city of New Orleans, for debts arising and incurred between the years 1879 to 1895, both inclusive, payment of which has not heretofore been provided for out of the reserve and permanent public improvement funds of the city for the years 1893 to 1898, both inclusive, excepting therefrom the claims of school teachers for the years 1880 to 1884, payment of which has been authorized by Act No. 110 of 1890, and is now being provided for by the city, said claims or judgments to be purchased on the most reasonable terms offered by creditors within the period of eighteen months succeeding the date of the adoption of this Constitution, the said board to invite proposals by public advertisements, to be made bimonthly; provided, any and all bids may be rejected. For the purpose of such redemption the city of New Orleans, through the Board of Liquidation, is hereby authorized to issue bonds to the extent of two hundred and fifty thousand dollars, bearing four per cent. per annum interest, payable semi-annually in such denominations as may be by said board determined upon, maturing in fifty years from the date of issue, but subject to redemption by said board in the reverse order of their issue at any time after sixty days' notice.

Said board is hereby authorized in its discretion to exchange said bonds for said claims against the city, evidenced by financial ordinances or judgments, or to sell said bonds, and with the proceeds thereof purchase said claims; provided, that no sale of said bonds shall be made for less than par.

Said Board of Liquidation shall, at any time it may

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be necessary, sell a sufficient number of the Constitutional Bonds of the city of New Orleans, now unsold, of the issue provided for by Act No. 110 of the General Assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by said act and adopted at the general election in 1892, to provide for the payment of interest or principal of the bonds hereby authorized to be issued. Whenever the said Board of Liquidation shall have received from the surplus revenues of the city of New Orleans, as provided herein, sufficient funds to meet the issue of bonds hereby authorized in principal and interest, the remainder of the surplus revenues so turned over to the said board shall revert to the city.

Art. 314. The provisions of the amendment embodied in joint resolution of the General Assembly No. 110, approved July 8, 1890, and thereafter ratified by the people and made part of the Constitution, are recognized as of full force and effect; the authority conferred upon the city of New Orleans and upon the Board of Liquidation of the City Debt, with respect to the issuance of Constitutional bonds of the city of New Orleans, and to the levy and collection of a special *ad valorem* tax of one per cent. upon all the taxable property, real, personal and mixed, in said city, for the payment of said bonds, in principal and interest, and with respect to the manner of such payment, is confirmed, as are also all rights vested by said amendment in the present and future holders of said bonds, whether issued or to be issued; and no limitations imposed by other provisions of this Constitution upon the authority of the city of New Orleans, shall be held to include, apply to, or affect, the taxing power herein contemplated and confirmed.

Art. 315. The city of New Orleans is hereby authorized and required to examine into and assume payment of the obligations of the Board of Directors of

the Public Schools of the parish of Orleans for unpaid salaries of school teachers and portresses and of other legitimate claims against said School Board, for the years 1882, 1883 and 1884, and for unpaid salaries of school teachers and portresses for the years 1885, 1886 and 1887, now in the hands of the original owners, who have in no wise parted with their rights of ownership, or pledged the same, as may be found by said city to be equitably due by said board. All claims to be examined into and assumed by the city of New Orleans under this article shall be presented to and filed with the City Council of said city within ninety days after the adoption of this Constitution, and not thereafter.

Art. 317. The funds requisite to pay said claims shall be provided by said Board of Liquidation, by the sale of a sufficient number of the Constitutional bonds of the city of New Orleans of the issue provided for by Act No. 110 of the General Assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by said act and adopted at the general election in 1892.